

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

TUESDAY

JULY 17, 2001

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The Regular Meeting convened in Room 220 South,
441 4th Street, N.W., Washington, D.C. 20001, pursuant to
notice at 9:30 a.m., Sheila Cross Reid, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

SHEILA CROSS REID	Chairperson
ANNE RENSHAW	Vice Chairperson
GEOFFREY GRIFFIS	Board Member
DAVID LEVY	Board Member

ZONING COMMISSION MEMBER PRESENT:

CAROL J. MITTEN	Commissioner
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COMMISSION STAFF PRESENT:

Jerrily R. Kress, Director, Office of Zoning
Beverly Bailey, Office of Zoning
Paul Hart, Office of Zoning
John Nyarku, Office of Zoning

OTHER AGENCY STAFF PRESENT:

Maxine Brown-Roberts, Office of Planning
Steven Cochran, Office of Planning

D.C. OFFICE OF CORPORATION COUNSEL:

Marie Sansone, Esq.

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P-R-O-C-E-E-D-I-N-G-S

(9:45 a.m.)

CHAIRPERSON CROSS REID: The hearing will please
come to order.

Good morning, ladies and gentlemen. This is July
17th public hearing of the Board of Zoning Adjustment of the
District of Columbia.

My name is Sheila Cross Reid, Chairperson.

Vice Chairperson Anne Renshaw is joining me, as
well as Jeff Griffis.

Today we have a new member, David Levy from the
Office of the National Capital Planning Commission, who is
replacing Susan Hinton.

Welcome to the BZA.

This is the first day he will be sitting.

MEMBER LEVY: Thank you. It's a pleasure to be
here.

CHAIRPERSON CROSS REID: Thank you.

Also representing the Zoning Commission is Carol
Mitten.

Copies of today's hearing are available to you.
They are located to my left near the door. All persons
planning to testify in favor or in opposition are to fill out
two witness cards. These cards are located on each end of the
table in front of us.

1 When coming forward to speak to the Board, please
2 give both cards to the reporter, who is sitting to my right.

3 The order of procedure for special exception and
4 variances is:

5 One, statement of witnesses of the Applicant;

6 Two, government reports, including Office of
7 Planning, Department of Public Works, et cetera.

8 Three, report of the Advisory Neighborhood
9 Commission;

10 Four, parties and persons in support;

11 Five, parties and persons in opposition;

12 Six, closing remarks by the Applicant.

13 Cross examination of the witnesses is permitted
14 by the Applicant or parties. The ANC within which the party is
15 located is automatically party in the case.

16 The record will be closed at the conclusion of
17 each case, except for any material specifically requested by
18 the Board, and the staff will specify at the end of the hearing
19 exactly what is expected.

20 The Sunshine Act requires that the public hearing
21 on each case be held in the open before the public. The Board
22 may, consistent with its rules of procedure and the Sunshine
23 Act, enter executive session during or after the public hearing
24 or on a case for purposes of reviewing the record or
25 deliberating on the case.

1 The decision of the Board in these contested
2 cases is to be based exclusively on the public record. To
3 avoid any appearance to the contrary, the Board requests that
4 persons present not engage members of the Board in
5 conversation.

6 Please turn off all beepers and cell phones at
7 this time so as not to interrupt these proceedings.

8 The Board will now consider any preliminary
9 matters. Preliminary matters are those which relate to whether
10 a case should be heard today, such requests for postponement,
11 continuance, or withdrawal, or whether proper and adequate
12 notice of the hearing has been given.

13 If you are not prepared to go forward with the
14 case today or if you believe that the Board should not proceed,
15 now is the time to raise such a matter.

16 Does the staff have any preliminary matters?

17 MS. BAILEY: No, Madame Chair.

18 CHAIRPERSON CROSS REID: Okay. Would you please
19 call the first case of the morning, the first and only case.

20 MS. BAILEY: Members of the Board, good morning.

21 My name is Beverly Bailey, and to my left is Mr.
22 Paul Hart.

23 The first case is Application No. 16727 of the
24 Untied House of Prayer for All People, pursuant to 11 DCMR
25 3103.2, for a use variance to build a new apartment house under

1 Subsection 330.5, not meeting the lot occupancy requirements
2 under Section 403 and the parking requirements under Subsection
3 2101.1. The property is located in an R-4 district at premises
4 626 S Street, N.W., Square 442, Lots 864 and 865.

5 All those wishing to testify, please stand. All
6 those persons wishing to testify on the united House of Prayer
7 case, please stand. Raise your right hand.

8 (Whereupon, the witnesses were duly sworn.)

9 MS. BAILEY: Thank you.

10 Members of the Board, we have a report from the
11 Office of Planning. That report needs to be waived into the
12 record.

13 We also have a report from the Department of
14 Public Works and from the ANC. The Board may want to take a
15 look at the ANC report. Although it was timely filed, it does
16 not contain all of the technical requirements that we normally
17 see in similar types of reports.

18 Madame Chair, the case is ready to go forward.

19 CHAIRPERSON CROSS REID: Thank you.

20 All right. Come forward, please.

21 Okay. All right. What you need to do is turn
22 your mic on. Each person who's going to be speaking, give your
23 name and your address.

24 MR. GREEN: Good morning, Madame Chair, and to
25 the distinguished members of the Board.

1 My name is Apostle S. Green, and I direct special
2 projects for Bishop Madison, United House of Prayer. I work
3 out of the office at 1117 Seventh Street, N.W., Washington,
4 D.C., and am pleased today to be joined by our architect, Ms.
5 Suzanne Reatig; also by Apostle W. Johnson, who is the
6 assistant pastor of the congregation located in the block where
7 the proposed development is situated.

8 And I'm also pleased to be joined by Apostle J.
9 Smith, who is the assistant pastor of the national headquarters
10 congregation of the United House of Prayer at 601 M Street,
11 N.W., Washington, D.C.

12 Madame Chair, we're pleased to be here to appear
13 before you this morning. I come in behalf of Bishop S.C.
14 Madison, United House of Prayer, to respectfully request the
15 permission of the Board to approve our various applications so
16 that we can go forward and construct some very badly needed
17 affordable housing in the Shaw community.

18 We had the privilege of meeting with the Mayor of
19 the city, Mayor Williams, a few weeks ago, and on Bishop
20 Madison's behalf, we pledged our efforts on behalf of the
21 United House of Prayer to support the Mayor's initiatives in
22 affordable housing in the District of Columbia.

23 As you know, there's been an appreciable
24 population loss in the city because of the lack of affordable
25 housing. We certainly can't do the entire job, but we'd like

1 to do our small part in adding to the stock of affordable
2 housing in the District of Columbia. That's what we'd like to
3 do on that site.

4 The United House of Prayer has been located in
5 that block, the 1700 block of Seventh Street, N.W. going back
6 almost 70 years. We've been in that block and have maintained
7 a place of assembly and worship.

8 And in keeping with the United House of Prayer's
9 purpose of building houses of prayer and worship, the Bishop of
10 the House of Prayer has seen fit to extend that vision to also
11 move in the direction of supplying housing in which people can
12 live, in addition to Houses of Prayers, and this development
13 today is in keeping with that.

14 We presently have under construction in the 1700
15 block of Seventh Street an eight unit apartment building that's
16 presently under construction for which Ms. Reatig is the
17 architect, and we've just completed within the past year
18 another eight unit apartment building directly on the corner of
19 Seventh and S, and that's also being used by Howard University
20 on the ground floor as a welcome center so that they will have
21 a presence at the Seventh and S Metro stop.

22 We've just come to kind of speak; the ministers
23 have come to speak in behalf of the philosophy of the United
24 House of Prayer, and our architect is here to respond to any
25 technical questions and present the technical side of this

1 application.

2 Let me just close by saying that we were pleased
3 also that we had the opportunity to appear before the Advisory
4 Neighborhood Commission, ANC-2C, and I noted that there was a
5 comment that their report may not have been detailed perhaps as
6 you wanted it, but I assure you that the Advisory Neighborhood
7 Commission 2C voted unanimous support and approval for the
8 efforts of the United House of Prayer to go forward with this
9 housing development.

10 Having said that, we're pleased to be here today,
11 Madame Chair.

12 CHAIRPERSON CROSS REID: Okay. Thank you very
13 much.

14 MR. JOHNSON: Good morning, Madame Chair. My name
15 is Apostle W. Johnson. I'm the assistant pastor of the United
16 House of Prayer, Shiloh Mission (phonetic), located at 1721-1/2
17 Seventh Street, N.W.

18 Adjacent to the House of Prayer and other
19 properties around this particular parcel that we're concerned,
20 I feel that if it's possible that we could maintain it and have
21 that location, it would help beautify the rest of that block,
22 which is badly needed for the rear and the front.

23 We just celebrated last week the 70th year in the
24 block. Although I haven't been there 70 years, I've been there
25 55 of them.

1 (Laughter.)

2 MR. JOHNSON: And we're pleased to be proud to
3 see the renovation of the whole area becoming built up to
4 beautify the Seventh Street corridor.

5 And many people come to worship there, and they
6 concur with what the House of Prayer is doing in that area.
7 Many have come and thought that by rising up that we would move
8 out of the neighborhood.

9 No, we stayed where we started. They started 70
10 years ago, and they're still there, and many have joined, and
11 many souls have been saved because of that purpose.

12 And I feel that if we could get this opportunity
13 to build, that would be another stone in the block to be able
14 to show the people that the House of Prayer is moving forward.

15 And I appreciate this time that I have to speak,
16 and thank you.

17 CHAIRPERSON CROSS REID: Thank you.

18 MR. SMITH: Good morning, Madame Chair, to the
19 Board.

20 I am pleased to be here this morning in behalf of
21 the Honorable Bishop S.E. Madison to speak concerning this
22 property.

23 We have been in the forefront of providing
24 affordable housing. Through the construction of this city,
25 we've seen so many of the lower class citizens being displaced.

1 Our bishops have stepped in and gave them affordable housing.

2 We know that we can't be born in heaven and live
3 down here. We have to live here also, and I feel that in
4 getting these properties and regenerating the neighborhood,
5 that it will not only give encouragement to our young people
6 that there's someone who cares about them, if they see that the
7 housing that is built is so expensive they can't even afford
8 it, but when they see somebody that is looking out in their
9 behalf, it gives them hope that there is a way out.

10 And I'm please to say that Bishop Madison is
11 providing this way out, and with your help, I'm quite sure that
12 we will be able to continue what we're doing.

13 Thank you.

14 CHAIRPERSON CROSS REID: Thank you.

15 I think that at this juncture, let me point out a
16 couple of things. One is that I'd like to first commend the
17 church because I am very much aware of the work that you've
18 done.

19 MR. GREEN: Thank you.

20 CHAIRPERSON CROSS REID: And that you have in the
21 foremost provided some affordable housing in the city,
22 particularly in Shaw.

23 MR. GREEN: Thank you, Madame Chair.

24 CHAIRPERSON CROSS REID: I'm very much aware of
25 that.

1 However, what we need to do this morning in order
2 to be able for you to be able to make your case is that you're
3 here in consideration of a variance.

4 MR. GREEN: Yes.

5 CHAIRPERSON CROSS REID: And I don't know if
6 anybody explained to you about the three pronged test for a
7 variance in regard to the property being unique or unusual, and
8 wherein it would be a practical difficulty for you to comply
9 with the existing zoning regulations.

10 Is anyone among you prepared to make that case?

11 MR. GREEN: Ms. Reatig, the architect.

12 CHAIRPERSON CROSS REID: All right.

13 MS. REATIG: I am the one who will.

14 CHAIRPERSON CROSS REID: All right. Okay. All
15 right. Thank you very much.

16 This is what we need to really dwell on so that
17 we could see how, in fact, we would be able to assist, you
18 know, with granting the variance, predicated on your ability to
19 be able to make your case this morning.

20 MS. REATIG: I'm Suzanne Reatig. I'm the
21 architect for the United House of Prayer on this project, and
22 as Apostle Green said before, I designed for them an eight unit
23 apartment that is on construction now on Seventh Street.

24 And I'll come to the Board and present this case.

25 CHAIRPERSON CROSS REID: Okay. Ma'am, you need

1 to speak into the mic. If you would come over to the board and
2 then --

3 MS. REATIG: Okay. I will speak loud. Okay?
4 You let me know if it's loud enough.

5 CHAIRPERSON CROSS REID: I don't know. The
6 recorder is shaking his head.

7 Why don't you bring the easel up closer to the
8 table where the microphone is and that might --

9 MS. REATIG: Okay, okay.

10 CHAIRPERSON CROSS REID: Okay.

11 MS. REATIG: That's good.

12 CHAIRPERSON CROSS REID: I'm sorry. Sir, did you
13 give your name and your address when you spoke?

14 MR. SMITH: I gave my name. I don't think I gave
15 my address.

16 CHAIRPERSON CROSS REID: Okay, but could you just
17 give both again, please, because one Board member didn't get
18 it?

19 MR. SMITH: Apostle J.A. Smith, Jr., 1327
20 Sheridan Street, N.W., Washington, D.C.

21 CHAIRPERSON CROSS REID: Okay. Thank you.

22 MS. REATIG: This is the -- north is going up.
23 This is S Street here; Seventh Street. This is Old Oregon
24 Avenue (phonetic). On this side is Florida Avenue here. Fifth
25 Street is on this side.

1 The yellow mark, that's our side. This is where
2 we proposed to build an apartment building. Currently there is
3 an apartment building on this side. This is the apartment
4 building. You see from one side there is S Street, and on two
5 sides we have allies, an alley here and an alley here.

6 This is the alley here and in the back, and this
7 is here, S Street. There is now a space between these two
8 buildings, between this building and the building next door.

9 So there are two entrances, two staircases to
10 this building, and there are a total of 12 apartment buildings.

11 Each unit is about 350 square feet. It's tiny
12 apartment. The ceiling is very low. Nothing conforms to code,
13 not the stairs, and there is no air conditioning.

14 So to renovate these units, we will have to
15 reduce the number of the apartments from 12 to six to make them
16 livable, and then by putting air conditioning, we will have to
17 reduce the ceiling. So the expense will be tremendously, and
18 we will have very compromised, small units.

19 Currently this building is occupying only 20
20 percent of the site. The site is -- I would show it from the -
21 - the site is here, 45 feet, and then it changes to 50 feet
22 about one third of the length, and the length of the site is
23 168 feet. So we have a site that is over 8,000 square feet.

24 If we do go by the zoning of R-4, all we can do
25 is put two townhouses in the front. That will leave all of the

1 back empty. We won't be able to build any other buildings
2 there because there is no access from the main street.

3 So what we are proposing is an L shaped building
4 that will have an open court. The entrance will be from here.

5 The entrance will be from here to the court, and again, we
6 will have -- it will be kind of three buildings, one, two,
7 three, and each one will have its staircase, and each door we
8 will have two apartments, except on the first floor here, we
9 will eliminate the apartment because we need an entrance to the
10 court. This will be open here, completely open, and in the
11 back, I'm taking one space here for parking, and this was to
12 accommodate all of the parking so that we won't need a variance
13 for the parking.

14 So now we are proposing to have 16 units that
15 will vary between 650 square feet to 920 square feet. I think
16 we have two units that are one bedrooms, and all the rest are
17 two bedroom units.

18 This is the alley here, and that's the building
19 that we are proposing. That will be the entrance, the open
20 entrance to the court. That will be from here, this way.

21 The site is kind of nice because we have exposure
22 on three sides. We have S Street. We have an alley here and
23 an alley here on this side. So each apartment will be quite
24 nice because it will have two sides of exposure and will have
25 windows and ventilation on both sides.

1 So like the units here will have the corner, and
2 these ones will have these two sides and here, the back, and
3 the court and the same thing here, the front and the court. So
4 these will be quite nice apartment buildings.

5 And we will be able to utilize 60 percent of the
6 site as it is on R-4. R-4 allows occupancy of 60 percent. If
7 we did townhouses, we would be able to occupy maybe 20 percent
8 of the site, and we do want to occupy 60 percent and provide
9 more units, and that's because the site is very skinny and
10 long. It's 45 here. It's 50 at the back and here, but it's
11 168 feet long. So it's over 8,000 square feet, and we want to
12 cover 60 percent of it, as allowed in R-4.

13 We are not asking as the variances the parkings
14 are. Now we are asking only for the variance of the use
15 because instead of R-4, we are asking apartments.

16 We are providing the right amount of parking
17 spaces. We are covering the 60 percent as allowed in R-4, and
18 we are going with a three story building. So the height
19 limitation as indicated in the zoning, we won't exceed 40 feet
20 for the three floor building.

21 The building will not be a stranger in the
22 neighborhood as an apartment building. The scale will be
23 compatible.

24 Just across the street, exactly across the
25 street, there is the Wonder Bread factory here that will

1 probably be renovated. I think it belongs now to the developer
2 Jemal, and this building that belongs to United House of
3 Prayer. That is an apartment building and has little on the
4 first floor, is at the corner -- it is here -- is at the corner
5 of Seventh and S.

6 This building here is on the northwest corner
7 here, just across the street from S Street on this side, and
8 it's a big unit. I think it will be used as a nursing home,
9 and these apartment buildings are on the other side, on S
10 Street here.

11 So there are apartment buildings in the area, and
12 as you can see, the subway station is just across the street
13 from our project. So it will be very desirable to increase the
14 density and have more people living in the city near the
15 subway.

16 I think I represented, and if you have any
17 questions, I'll be happy to answer.

18 CHAIRPERSON CROSS REID: Thank you very much.
19 I'm glad that you did clarify for us your reasoning behind
20 requesting the variance because in the submission, we really
21 didn't have much to go on.

22 Board members, questions?

23 (No response.)

24 CHAIRPERSON CROSS REID: Okay. I do have one.

25 Turn back to the other side of that particular

1 board. Okay. Now, if I understand you correctly, you're
2 contending that R-4 zoning will allow townhouses.

3 MS. REATIG: Correct.

4 CHAIRPERSON CROSS REID: And because of the
5 configuration of that particular site, you can only put two.

6 MS. REATIG: Yes, because I have a frontage on S
7 Street that is very narrow. It's 45 feet, and we cannot enter
8 from an alley or --

9 CHAIRPERSON CROSS REID: It's landlocked? Is the
10 alley landlocked in the back? You said you can't enter?

11 MS. REATIG: No, we can enter, but you can build
12 on the alley. You have to have a frontage.

13 CHAIRPERSON CROSS REID: Right, okay. I see what
14 you're saying. You can't build on the alley. So you have to
15 have the frontage on S Street.

16 MS. REATIG: Right.

17 CHAIRPERSON CROSS REID: Which will allow only
18 two.

19 MS. REATIG: All right.

20 CHAIRPERSON CROSS REID: So then you're saying --
21 oh, I see. I don't know why I said "landlocked." I see you've
22 got the cars, the parking in the back.

23 So it would be a lot of wasted land --

24 MS. REATIG: Exactly.

25 CHAIRPERSON CROSS REID: -- that couldn't be

1 utilized otherwise --

2 MS. REATIG: Right.

3 CHAIRPERSON CROSS REID: -- because of the fact
4 that you have to have the frontage on the front. So that is
5 the practical difficulty, the fact that it does not allow for
6 the -- to optimize the maximum use of the site there in order
7 to be able to provide more housing.

8 MS. REATIG: Right. So we cannot build -- we
9 will be able to cover here, but we won't be able to have other
10 units that don't have the front.

11 CHAIRPERSON CROSS REID: Well, nothing can be
12 done with the other --

13 MS. REATIG: So this will be left over.

14 CHAIRPERSON CROSS REID: You've used 20 percent
15 of the lot occupancy, and then the remainder of it would just
16 be --

17 MS. REATIG: I can't do anything, yeah.

18 CHAIRPERSON CROSS REID: Okay. Thank you.

19 MS. REATIG: Yeah.

20 CHAIRPERSON CROSS REID: All right.

21 MS. REATIG: So this way we have an L shaped
22 building.

23 CHAIRPERSON CROSS REID: Sure.

24 MS. REATIG: And the entrance, it's an open
25 court. So it would be open here. So it will be quite nice

1 here. There will be paving and landscaping, and all the units
2 will face the court and also another side, and these units will
3 face the street, and this one will have the alley and the court
4 and the same thing, the court and the alley.

5 So they will all have a lot of windows from two
6 sides, and it will be nice unit. So it's not that by
7 increasing the density we are compromising and making units
8 that are not nice or habitable.

9 Apostle Green indicated the bishop's dedication
10 is to provide affordable housing, and I've been working with
11 him in the last two or three years, and one of the things that
12 he emphasizes a lot is the quality. He cares a lot about the
13 quality of living of his people, and even his providing
14 affordable housing, they are never compromised.

15 And the building that I just did for them on
16 Seventh Street that has been constructed has a lot of glass,
17 large windows, masonry.

18 CHAIRPERSON CROSS REID: Okay.

19 MS. REATIG: A good quality building.

20 CHAIRPERSON CROSS REID: Okay. Now, the other --
21 on the back of the other board where you had the map of the
22 site, where you showed a Jemal site, the bakery across the
23 street.

24 MS. REATIG: Yes, this one.

25 CHAIRPERSON CROSS REID: Okay. Now, in that R-4

1 zoning right there, you said there are other apartment
2 buildings.

3 MS. REATIG: Yeah, here. But you see this one
4 here, that is this one. It's not our fault because it's S --
5 Seventh Street have a different zoning.

6 CHAIRPERSON CROSS REID: Okay. So that's what C-
7 2-A coming down Seventh Street?

8 MS. REATIG: It was CB-5, I believe.

9 CHAIRPERSON CROSS REID: CB-5?

10 MS. REATIG: Yeah.

11 CHAIRPERSON CROSS REID: Okay. So you don't have
12 the -- we don't see the zoning, but my question is right beside
13 it, do you know are those apartment buildings right beside the
14 site?

15 MS. REATIG: This one here?

16 CHAIRPERSON CROSS REID: Okay. That picture
17 right there, did you say those were apartment buildings?

18 MS. REATIG: Okay. This, this is the Wonder
19 Bread factory.

20 CHAIRPERSON CROSS REID: No, that's across the
21 street. No, no, no. I mean adjacent, right abutting.

22 MS. REATIG: Oh, these? These are townhouses.

23 CHAIRPERSON CROSS REID: Those are townhouses.

24 MS. REATIG: Yes.

25 CHAIRPERSON CROSS REID: And what about the other

1 side?

2 MS. REATIG: Okay. Here there is one townhouse
3 that was left, and then it's this building that is on this
4 side.

5 CHAIRPERSON CROSS REID: Okay. So the uses there
6 abutting that property are there are townhouses.

7 MS. REATIG: Yes. The one on this side, yes.

8 CHAIRPERSON CROSS REID: Okay, all right.

9 MS. REATIG: Yes, these ones. I'm not --

10 CHAIRPERSON CROSS REID: What I'm trying to --
11 what I'm trying to get to is those lots right beside it, those
12 are townhouses, but they're more narrow.

13 MS. REATIG: Very narrow lots, yeah.

14 CHAIRPERSON CROSS REID: They don't have the
15 square footage as the subject property square footage.

16 MS. REATIG: Correct.

17 CHAIRPERSON CROSS REID: What is that on the end
18 right there, going down S Street?

19 MS. REATIG: Here?

20 CHAIRPERSON CROSS REID: Right there, where your
21 pointer is, the big lot.

22 MS. REATIG: Here?

23 VICE CHAIRPERSON RENSHAW: No, no, up.

24 CHAIRPERSON CROSS REID: On the other corner.
25 Come over east. Come over to the east.

1 MS. REATIG: Here?

2 CHAIRPERSON CROSS REID: Un-huh.

3 MS. REATIG: Okay. These are townhouses that are
4 here.

5 CHAIRPERSON CROSS REID: You said "these." I
6 mean there are townhouses all on one lot?

7 MS. REATIG: Well, I'm not sure. You're talking
8 about 108.

9 CHAIRPERSON CROSS REID: That one.

10 MS. REATIG: I'm not quite sure.

11 CHAIRPERSON CROSS REID: You don't know what that
12 is?

13 MS. REATIG: No.

14 MS. BROWN-ROBERTS: Maxine Brown-Roberts from the
15 Office of Planning.

16 CHAIRPERSON CROSS REID: Okay.

17 MS. BROWN-ROBERTS: That is a church right there.

18 CHAIRPERSON CROSS REID: Oh, okay. Okay, all
19 right. Thank you.

20 All right. Are there other questions, Board
21 members?

22 VICE CHAIRPERSON RENSHAW: I would -- excuse me.

23 I would just like to ask Ms. Reatig if she has any overlay of
24 the existing 12 unit apartment house that you could put over
25 your design to show what it is now and what it is you're

1 proposing.

2 MS. REATIG: It's not an overlay, but I have a
3 plat that I can show you --

4 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

5 MS. REATIG: -- exactly how much it covers.

6 VICE CHAIRPERSON RENSHAW: Thank you.

7 MS. REATIG: I have it, and I can show it to you.

8 MS. BAILEY: Ms. Reatig, while you're waiting for
9 the Board members, we have your site plan, but the other
10 graphics that you're using today, is it possible to get us a
11 copy later on?

12 MS. REATIG: Sure.

13 CHAIRPERSON CROSS REID: Okay. This property
14 abuts the C-2-B zoning, but I see it's R-4, but all around --
15 okay. Now, this is -- do you have one of these?

16 VICE CHAIRPERSON RENSHAW: Not yet.

17 CHAIRPERSON CROSS REID: Did he make several of
18 these?

19 PARTICIPANT: I think that's the only copy.

20 CHAIRPERSON CROSS REID: That's it? Okay. This
21 is the only.

22 MS. REATIG: This is existing building.

23 VICE CHAIRPERSON RENSHAW: That you have crossed.

24 MS. REATIG: Right.

25 VICE CHAIRPERSON RENSHAW: Yellow cross.

1 MS. REATIG: That's right, and the boundary of
2 the site.

3 CHAIRPERSON CROSS REID: What percentage of the
4 lot? Do you know?

5 MS. REATIG: This is 20 percent.

6 CHAIRPERSON CROSS REID: This is the 20 percent.

7 MS. REATIG: Yes.

8 CHAIRPERSON CROSS REID: But didn't you say --
9 did you say two? You can put two townhouses?

10 MS. REATIG: But then I will block -- I can put
11 two townhouses, but if I put two townhouses, again, I won't
12 have windows on the long side. I would have in the front and
13 back, and I can have just two units. So it's not that I can
14 take these two buildings and put one next to the other because
15 then I won't be able to provide windows to the other one.

16 CHAIRPERSON CROSS REID: Well, wait a minute. We
17 understand this.

18 MS. REATIG: Okay.

19 CHAIRPERSON CROSS REID: If you put two
20 buildings, then you would have roughly 40 percent lot
21 occupancy?

22 MS. REATIG: No. If I -- yeah, but for a
23 townhouse, this dimension is too long. You see, I won't go
24 with this size because this is an apartment building that have
25 two entrances. So if I have a townhouse, I have on the

1 frontage two -- you see, I can't -- it's not if I will go and
2 take a very long townhouse like this here, you see, and another
3 one because it would be huge for a townhouse, but I will have
4 half of the lot for the townhouse, about 22 feet, and then
5 maybe I will go 40 or 50 feet, and so it will cover 25 percent
6 of the lot with two townhouses.

7 CHAIRPERSON CROSS REID: Oh, I see. And you
8 still would only be covering 25 percent with two townhouses.

9 MS. REATIG: Correct.

10 CHAIRPERSON CROSS REID: Oh, okay.

11 VICE CHAIRPERSON RENSCHAW: I'm looking at what
12 you've handed in with the yellow demarkation and the cross-
13 hatching showing the three story apartment building that is
14 presently in place.

15 MS. REATIG: Yes.

16 VICE CHAIRPERSON RENSCHAW: In the yellow
17 demarkation, is that 100 percent of the lot --

18 MS. REATIG: Yes.

19 VICE CHAIRPERSON RENSCHAW: -- that you would be
20 using?

21 MS. REATIG: Yes. That's -- that's all the lot.

22 This is -- the property line is here. See, this is public
23 space here. The property line is here, and the bay window is -
24 -

25 VICE CHAIRPERSON RENSCHAW: In public space.

1 MS. REATIG: -- projecting in public space. So
2 this is the 100 percent of the lot.

3 VICE CHAIRPERSON RENSHAW: Which you are asking
4 to use.

5 MS. REATIG: Yes, to use, and to cover 60
6 percent.

7 MEMBER GRIFFIS: Madame Chair, a quick question.
8 Do you know what the original use of this structure was? Was
9 it always an apartment building?

10 MS. REATIG: Yes, but it's empty now for a few
11 years, and --

12 MEMBER GRIFFIS: But originally constructed, it
13 was an apartment building?

14 MS. REATIG: Yes.

15 CHAIRPERSON CROSS REID: When was it constructed?
16 It's R-4, right?

17 MEMBER GRIFFIS: Right.

18 CHAIRPERSON CROSS REID: But do you know how long
19 it's -- do you know when it was constructed?

20 MS. REATIG: No, but I'm sure that it's more than
21 50 years.

22 CHAIRPERSON CROSS REID: Okay.

23 MEMBER GRIFFIS: It seems to me, looking at that
24 plat and looking at the photograph that it actually looks like
25 one of the original townhouses. I mean, I don't disagree with

1 you necessarily that it's a very deep townhouse, but I do
2 disagree with you that it's not a typical depth of a townhouse.

3 You're looking at 84, 85 feet I think oftentimes. In fact,
4 I'd be interested to know what the one across the alley is.

5 MS. REATIG: Okay. You enter here in the yard,
6 and there are two stairs, one for the first half of the
7 building and another for the rear half of the building, and
8 each stair will take you to six apartments.

9 MEMBER GRIFFIS: Right.

10 MS. REATIG: So the entrance was not from the
11 front, from Seventh Street, but from inside.

12 CHAIRPERSON CROSS REID: It looks like an
13 apartment building.

14 MS. REATIG: So it is an apartment building. I
15 don't think it was altered.

16 CHAIRPERSON CROSS REID: Okay. Thank you.

17 MR. GREEN: Madame Chair, the assistant pastor
18 who's in the congregation there in that block remembers that
19 structure being like that for about 50 years, since he's been
20 there.

21 CHAIRPERSON CROSS REID: Well, I just wondered
22 because it's R-4. So apparently it was before the existing
23 zoning regulations. So it's nonconforming, a nonconforming use
24 even though it's not in the use.

25 Okay. Thank you.

1 MEMBER GRIFFIS: Another quick question.
2 Actually let me walk through the plan, just not very deep
3 questions, but your courtyard that you're creating, how are you
4 defining it on the property line, meaning in that there's no
5 adjacent structure, there's an empty lot, when there is future
6 construction and then prior to future construction, what is the
7 definition of that?

8 MS. REATIG: Okay. There is a townhouse here
9 that arrives about to here, and then it's their yard. So even
10 the court here, it's not that it will be blocked by another
11 building because we have townhouses here.

12 MEMBER GRIFFIS: But is there a fence? Is there
13 a wall?

14 MS. REATIG: Yes, there is a fence.

15 MEMBER GRIFFIS: Okay.

16 MS. REATIG: There is a fence. So there is a
17 fence here. So the courtyard and the backyard of the neighbor
18 will be separated by a fence.

19 MEMBER GRIFFIS: And is there lighting provided
20 in that courtyard? Is it wall mounted or is it lamp post? How
21 is that being proposed?

22 MS. REATIG: Lighting?

23 MEMBER GRIFFIS: Yes.

24 MS. REATIG: I didn't get in the design into this
25 extent, but I --

1 MEMBER GRIFFIS: You're anticipating putting
2 lighting in the courtyard?

3 MS. REATIG: Yes, right, right.

4 MEMBER GRIFFIS: And also you have two entrances
5 there.

6 And then the back side, obviously you're in
7 schematics, but is there a proposed plan for screening the
8 dumpsters on the alley side for loading and unloading?

9 MS. REATIG: Yes. We will screen. We have
10 plenty of room here, and we will screen. We will have a
11 structure to screen the dumpster at the alley side.

12 MEMBER GRIFFIS: And what is the access to the
13 dumpsters for the apartments?

14 MS. REATIG: Okay. You see here? That's the
15 first floor. So you can enter into here the stairs of this
16 unit here, and this is open. You see? So you can get to the
17 alley in this way.

18 MEMBER GRIFFIS: Open in terms of there's access?

19 MS. REATIG: There is access in the back, yes.
20 So for the parking because I didn't want someone that have
21 parking to go all the way around or to the dumpster or the
22 trash. So, yes, there is access here, and here it is storage
23 for bicycles and things like that.

24 MEMBER GRIFFIS: Okay. On your evaluation, the
25 intake form for the existing required and allowed and proposed,

1 I'm seeing for lot occupancy a difference between this and from
2 the OP report. You're saying that you're providing actually
3 5,235 square foot footprint; is that correct?

4 MS. REATIG: Five thousand two hundred?

5 MEMBER GRIFFIS: And 35.

6 MS. REATIG: It's -- okay. You see like the
7 question is if we deduct the area that is open here on the
8 first floor, so it will be more -- I mean closer to 5,000
9 square feet. If we calculate this open area underneath the
10 bridge because there is kind of a bridge here on the second
11 floor, you see here? This is open. So with that and the
12 parking space, it's about -- because we have also a parking
13 space in the building --

14 MEMBER GRIFFIS: Actually let me ask you for
15 clarification.

16 MS. REATIG: Yeah.

17 MEMBER GRIFFIS: You're subtracting that from lot
18 occupancy?

19 MS. REATIG: No, no, no, no. I'm not.

20 MEMBER GRIFFIS: I see.

21 MS. REATIG: What you have, it's the whole total.

22 MEMBER GRIFFIS: right.

23 MS. REATIG: But I say that if we will subtract
24 it so I have less than that. I have about 5,000 square feet.

25 MEMBER GRIFFIS: You will subtract it for what?

1 MS. REATIG: Okay. Maybe I didn't understand
2 your question. You are talking about coverage or net or gross
3 or --

4 MEMBER GRIFFIS: What I'm going to is you're
5 going -- I think we'll get here -- whether you need a variance
6 for lot occupancy or not. So what I'm trying to establish is
7 what the actual lot occupancy is.

8 MS. REATIG: Okay.

9 MEMBER GRIFFIS: So what you have listed as 5,235
10 square feet --

11 MS. REATIG: Yes.

12 MEMBER GRIFFIS: -- as occupied lot, that to me
13 in rough, quick calculations gives you close to 65 percent lot
14 occupancy.

15 MS. REATIG: Okay. If that's the case, we can
16 modify and reduce four percent of the building.

17 I just want to explain something. We did these
18 plans. I submitted them, and then I was working with Maxine in
19 the last week in the Office of Planning, and she suggested to
20 go with less variances than we are asking, just to ask for the
21 use occupancy. So I did not go through the calculations again.
22 I just reduced the unit, and I provided an extra parking
23 space.

24 Now, this is not the final design. This is the
25 concept, and we will look, and I don't think I have a problem

1 to reduce if I need to.

2 MEMBER GRIFFIS: Well, let's not go to reducing
3 yet. I mean, I think let's go to what's actually before us,
4 and then we can go there.

5 MS. REATIG: Okay. So that's what -- yeah.

6 MEMBER GRIFFIS: Well, parking, obviously the new
7 plan that has been submitted is adding a parking space. In my
8 opinion, that may not be a great idea, but nonetheless, let's
9 get there in terms of what's in front of us.

10 The next thing I have an issue with is in the new
11 submittal you actually have an elevation that shows your stair
12 penthouses penetrating above your parapet, creating actually
13 three roof structures. I'm wondering did you have an
14 opportunity to look at Section 411 regarding the fact that all
15 of them should be under one penthouse.

16 MS. REATIG: You can exceed with the stair
17 penthouse if it does not exceed four feet above the parapet.

18 MEMBER GRIFFIS: Right. And that's the next
19 question.

20 MS. REATIG: And that's what it is.

21 MEMBER GRIFFIS: Okay. So it's below four feet
22 that it's happening there.

23 MS. REATIG: From the parapet, yes.

24 MEMBER GRIFFIS: Okay.

25 MS. REATIG: Exactly.

1 MEMBER GRIFFIS: Good. I think that's all I have
2 right now.

3 CHAIRPERSON CROSS REID: Okay. Thank you very
4 much.

5 COMMISSIONER MITTEN: I wanted to follow up on a
6 question that Mr. Griffis had regarding the lot occupancy, the
7 maximum lot occupancy. There's a chart in the zoning ordinance
8 that speaks to the maximum lot occupancy in R-4.

9 MS. REATIG: Yes.

10 COMMISSIONER MITTEN: And since this is not a use
11 that's permitted by right, it would come under all other
12 structures, and that would be 40 percent.

13 MS. REATIG: Okay. Maybe, Maxine, you want to
14 talk about --

15 MS. BROWN-ROBERTS: Okay.

16 MS. REATIG: Because we spoke with the Zoning --

17 CHAIRPERSON CROSS REID: Okay. Ms. Mitten, maybe
18 we can move now to Office of Planning report.

19 MS. REATIG: And here's what they said. So we
20 have different interpretation to that.

21 COMMISSIONER MITTEN: Okay.

22 MS. REATIG: Mr. Bellow (phonetic) told us
23 because when I applied, that's what I was thinking, and that's
24 why I applied for a variance of the occupancy, but then Mr.
25 Bellow was saying, no, that this was 60 percent and we can --

1 so there is a question in the interpretation of that.

2 But that's what I thought also at the beginning.

3 COMMISSIONER MITTEN: Okay. Well, we can get
4 that sorted out with the Office of Planning.

5 MS. REATIG: Yeah.

6 COMMISSIONER MITTEN: I just wanted to also
7 follow up on Chairperson Reid started you down a path in the
8 beginning of your testimony, which was the three pronged test,
9 and so far I think all I've heard is about the first test,
10 which is the unusual condition, which you've said is that the
11 lot is relatively long compared to its width.

12 MS. REATIG: Right.

13 COMMISSIONER MITTEN: Can you speak to the issue
14 of undue hardship?

15 MS. REATIG: Yes. Renovating, the owner is
16 allowed to renovate a nonconforming building, but not to
17 demolish and build a new one. If they do renovate the unit, it
18 will be much more expensive to bring it to code, and it will
19 allow only a smaller amount of units. So the income will be
20 reduced.

21 So there will be a big expense to renovate these
22 buildings. There won't be enough units, and the income will be
23 limited on these units. So it won't be feasible.

24 COMMISSIONER MITTEN: Can you bridge the gap for
25 me between saying that the existing structure causes an undue

1 hardship because of the expense to renovate it --

2 MS. REATIG: Yes.

3 COMMISSIONER MITTEN: -- and the fact that you
4 want to tear that structure down? So you want to eliminate the
5 thing that causes you the undue hardship.

6 MS. REATIG: Right.

7 COMMISSIONER MITTEN: And yet the undue hardship
8 remains. Can you explain that?

9 MS. REATIG: Yes. We have 12 units, and each of
10 them is 350 square feet. They have low ceilings, no heating
11 and air conditioning. It's very hard in the living today to do
12 anything with an apartment, and especially for families, that
13 are 350, and even if we take two apartments and combine them,
14 it's still quite small.

15 And we have to redo the stairs because they don't
16 comply with the code, and then we have to reduce the height of
17 the ceilings to provide air conditioning.

18 So these buildings, these units will be very
19 compromised, and the cost for renovation is about double per
20 square foot than new construction.

21 COMMISSIONER MITTEN: And I understand that. I
22 guess I'm not making my point, which is if you remove -- the
23 thing that's causing you a hardship is the existing building.

24 MS. REATIG: Yes.

25 COMMISSIONER MITTEN: Which you're proposing to

1 demolish.

2 MS. REATIG: Yes.

3 COMMISSIONER MITTEN: Okay. So once you demolish
4 the building, the hardship is gone.

5 MS. REATIG: Yeah, but I can't build -- I cannot
6 utilize the site. Then there is this thing that I have a very
7 long, narrow site that I cannot utilize it fully because of its
8 configuration.

9 COMMISSIONER MITTEN: So your hardship is just
10 that you can't build as big a building as you would like to on
11 the property because of its configuration and because of its
12 zoning, in fact?

13 MS. REATIG: Yes, because of its zoning, correct,
14 and its configuration, yes.

15 CHAIRPERSON CROSS REID: I think that from what
16 I've been able to ascertain so far is that the undue hardship
17 goes to the ability to comply with the existing zoning
18 regulations, and from what I'm hearing is that the undue
19 hardship appears to be that it's far more costly to renovate it
20 than it is to just replace it.

21 MS. REATIG: Correct.

22 CHAIRPERSON CROSS REID: So in order to comply
23 with the existing zoning regulations, the costs would be
24 prohibitively higher than to just replace it with everything
25 new. I think that's the undue hardship. I don't think that

1 it's because the building is there and removing it removes the
2 undue hardship. It's the compliance with the existing zoning
3 regulations, and I think the hardship goes to looking at the
4 comparison to bring it back rather than to just replace it.

5 It would be a matter of what would be the most
6 economically feasible thing to do under the circumstances,
7 given the zoning regulations.

8 That's the way I was hearing it.

9 MEMBER GRIFFIS: I guess I have some question of
10 that because I still don't see the bridge between the fact that
11 hardship can be created with the existing structure because the
12 implications are bringing it up to code and livability would be
13 a hardship.

14 But I think as others have said, once that is
15 gone, then where is the hardship to create a new, larger size
16 structure on the lot?

17 CHAIRPERSON CROSS REID: Well, first of all,
18 let's deal with this within the scope of deliberations because
19 we're getting into deliberations right now. Let's listen to
20 the entire case, and then when we deliberate, we can then get
21 into, you know, trying to under and make some sense of all of
22 it.

23 MEMBER GRIFFIS: That's fine.

24 VICE CHAIRPERSON RENSHAW: Yes, I think we might
25 be helped with the Office of Planning report.

1 CHAIRPERSON CROSS REID: Yes, thank you.

2 We will move now to the Office of Planning
3 report.

4 MS. BROWN-ROBERTS: Good morning, Madame Chairman
5 and members of the Board. I'm Maxine Brown-Roberts from the
6 office of Planning.

7 Our report was late, and we're requesting that it
8 be entered into the record.

9 CHAIRPERSON CROSS REID: I have no problem with
10 waiving the rules to allow the Office of Planning report to
11 come in late, unless there's any objection.

12 (No response.)

13 CHAIRPERSON CROSS REID: Okay. Thank you.

14 Go ahead.

15 MS. BROWN-ROBERTS: Thanks.

16 The R-4 district permits a conversion of existing
17 buildings before May 13, 1958, an apartment house. However,
18 due to the age of the building and the small size of the
19 existing apartments, which would make the units even smaller
20 due to the need to install heating and cooling system, the
21 Applicant proposes to replace the existing building.

22 Additionally, the Applicant requested variances
23 from the lot occupancy and the parking requirements.

24 The Office of the Zoning Administrator conveyed
25 to the Office of Planning that it is their interpretation that

1 the proposal is for a row dwelling, with multiple dwellings,
2 and that lot occupancy requirement is 60 percent, which the
3 proposal meets.

4 Section 2101.1 requires one dwelling unit per
5 four units. With the number of units reduced to 16, four
6 parking spaces are required, and the Applicant is providing six
7 spaces. Therefore, a variance from the parking requirement is
8 no longer necessary.

9 The proposal meets the requirements for Section
10 31 or 3.2 for granting a variance in that the site is unique
11 due to its long, narrow shape that is unlike any of the other
12 lots, except for two in this and surrounding squares.

13 These other lots of similar shape are developed
14 in apartments similar to those proposed for this site.

15 The property has an exceptional condition in that
16 it has a building that is old and does not presently meet the
17 standards mandated in the building code.

18 The long, narrow shape of the property presents
19 undue hardship as it precludes the Applicant from developing a
20 building with a typical row house flat configuration, and does
21 not allow for building with single entrance and double loaded
22 passage.

23 The size of the existing apartments would be
24 inadequate and not serve the needs of many potential residents.

25 Under the existing regulations, there would be

1 fewer units and much larger units that may not be affordable to
2 potential residents.

3 Additionally, even with some renovation, the
4 existing building would remain substandard as there is a lack
5 of room for upgrading the heating and cooling system.

6 The proposal for replacing the old apartment
7 building would not be detrimental to the public good, as it
8 will contribute to the rejuvenation of the area around the
9 Shaw-Howard University Metro station.

10 The design of the building has utilized the fact
11 that the property abuts two alleys, and most of the units will
12 have light and air coming from two directions.

13 The internal courtyard will provide some passive
14 recreational space for the residents that may not have been
15 possible under existing regulation in such an urban area.

16 The proposal is consistent with the goal of the
17 comprehensive plan to encourage residential development in
18 order to increase the number of residents within the city. In
19 particular, the apartments will serve a mixture of family sizes
20 and incomes. The new building will meet the requirement of
21 Section 33 and, therefore, will not impair the intended purpose
22 and integrity of the zone plan.

23 The Office of Planning, therefore, recommends
24 that the Board of Zoning Adjustment approve the variance
25 requested.

1 Thank you.

2 CHAIRPERSON CROSS REID: Thank you.

3 Questions, Board members?

4 COMMISSIONER MITTEN: Ms. Roberts, can you give
5 me -- shed anymore light on the Zoning Administrator's opinion
6 that the lot occupancy requirement for this use is 60 percent?

7 MS. BROWN-ROBERTS: When I spoke to Mr. Bellow,
8 and from my personal interpretation I said that it was 40
9 percent, and he said that it is considered -- the new building
10 is considered some sort of row dwelling with multiple units,
11 and therefore, he was recommending the 60 percent.

12 COMMISSIONER MITTEN: Well, there really isn't a
13 use called row dwelling with multiple dwelling units, unless
14 it's a conversion, and this isn't a conversion.

15 So I would just like to say that I disagree with
16 the Zoning Administrator's interpretation, and I think the
17 requirement is 40 percent.

18 MS. SANSONE: Madame Chair, if I might just --

19 CHAIRPERSON CROSS REID: Please.

20 MS. SANSONE: -- point out in the definitions of
21 the regulation a row dwelling is defined as a one family
22 dwelling having no side yards. So there is no such thing as a
23 row dwelling with multiple dwelling units.

24 CHAIRPERSON CROSS REID: Okay. Thank you.

25 All right. Any other questions for Office of

1 Planning?

2 Let me see. Ms. Roberts, if, in fact, the
3 Applicant was to comply with the existing zoning regulations in
4 regard to this use of this building, currently the units are, I
5 think, 300, 350 -- 350 square feet, each unit.

6 MS. REATIG: Yes.

7 CHAIRPERSON CROSS REID: Are they efficiencies?

8 MS. REATIG: It's -- this building was --

9 CHAIRPERSON CROSS REID: Speak into the mic,
10 please, ma'am.

11 MS. REATIG: It was probably efficiencies or one
12 bedroom. They are in -- boarded and very bad shape.

13 CHAIRPERSON CROSS REID: I couldn't imagine a one
14 bedroom 350 square feet.

15 MS. REATIG: Yeah. It's very, very tiny.

16 CHAIRPERSON CROSS REID: Yeah. Nonetheless, for
17 them to renovate it, it would require did you say something --
18 ultimately the architect was saying something about putting in
19 heating and air conditioning systems.

20 There's no heating system there now?

21 MS. REATIG: No.

22 CHAIRPERSON CROSS REID: Okay, and also the air
23 conditioning unit. Then with that being -- if that were
24 installed then, approximately how much of the space would be
25 taken up with that?

1 MS. REATIG: We have to provide the furnace, an
2 air handling unit. The condensing unit can be outside or on
3 the roof, a hot water heater for each unit.

4 CHAIRPERSON CROSS REID: Okay.

5 MS. REATIG: Yeah, and then the main space that
6 it will take, it's really ceiling because we have to go with
7 ducts, and also some vertical space when you move with the
8 duct.

9 CHAIRPERSON CROSS REID: Did you have a cost
10 analysis as to the amount that it would cost to renovate in
11 comparison to the amount of what it would cost to put the new
12 building?

13 MS. REATIG: Yes, it will cost about the same.
14 It will cost the same to renovate this building than building a
15 new building.

16 CHAIRPERSON CROSS REID: But the only difference
17 is that the units would be smaller?

18 MS. REATIG: Will be smaller. We will have only
19 six units, and here we will have 16 units.

20 CHAIRPERSON CROSS REID: Oh, okay. All right.
21 Thank you very much.

22 Any other questions, Board member?

23 COMMISSIONER MITTEN: I did have another question
24 for Ms. Roberts, which is in your report it says that the
25 property has an exceptional condition in that it has a building

1 that is old and does not presently meet the standards mandated
2 in the building code.

3 And I think you heard the exchange with Ms.
4 Reatig regarding the existing building being characterized as
5 the hardship when demolition is planned.

6 Can you speak to that?

7 MS. BROWN-ROBERTS: Can you repeat? I'm not sure
8 I understood the question.

9 COMMISSIONER MITTEN: Okay. The issue is that
10 the existing building is being represented as the either --
11 it's either being represented by you all as the exceptional
12 condition or by the Applicant as the thing that creates the
13 undue hardship. And yet the plan is to remove that building.

14 So given that we're going to remove the building,
15 how is it that that remains either an exceptional condition or
16 a source of undue hardship?

17 MS. REATIG: I think that it's the shape of the
18 property that is causing the hardship. As she said, when they
19 remove the existing building, they'll still have a long, narrow
20 lot in which to put the two units, in which the requirement now
21 would say two row houses.

22 If they were to try and do row houses with
23 multiple units in them, there would still be a problem because
24 of the narrowness of the lot. They couldn't have double loaded
25 or double sided apartments. There would still be a problem.

1 COMMISSIONER MITTEN: Well, I guess one of my
2 concerns is you all have an attachment of a Sanborn plat to
3 your report, and when I look at particularly lots in that
4 Square 442, I see a number of townhouses that have pretty deep
5 backyards, and that's just the nature of the lot configurations
6 in this square because of the way the alleys are oriented and
7 just the way the square is configured.

8 So I guess I'm just wondering. In a typical R-4
9 zone if you have a deep lot, it's not an unusual condition to
10 end up with a deep backyard. There's nothing inherently -- it
11 might not allow you to develop the property to its maximum, but
12 it's certainly not that unusual, and I think this very square
13 bears that out.

14 Do you have any comment on that?

15 MS. REATIG: I think I agree. The two lots that
16 I referred to, which are sort of south of Glick Court, those
17 two long lots, and it doesn't show here, but those are
18 developed with apartment buildings also, which takes up nearly
19 all of the lot, but the others are really small, row house type
20 units that have been converted into apartments.

21 COMMISSIONER MITTEN: But am I incorrect in
22 saying that some of those lots have very deep back yards?

23 MS. REATIG: You're correct.

24 COMMISSIONER MITTEN: Okay. Thanks.

25 CHAIRPERSON CROSS REID: Are the lots -- I'm not

1 clear on this. Are the lots that you're referring to, Ms.
2 Roberts, the ones that you indicated in your report as being
3 the two similar lots?

4 Did you say that those two similar lots had
5 townhouses or apartment buildings?

6 MS. BROWN-ROBERTS: They're apartment buildings.

7 CHAIRPERSON CROSS REID: Okay. So I think that
8 you contended in your report that the lot within itself was
9 unique, and that the configuration also in the narrowness, and
10 there were two similar -- but they were similar to two other
11 lots, and those two other lots that they're similar to have
12 apartment buildings rather than townhouses.

13 MS. BROWN-ROBERTS: Right. That's correct.

14 CHAIRPERSON CROSS REID: Okay. Thank you.

15 All right. Any further questions?

16 (No response.)

17 CHAIRPERSON CROSS REID: All right. The ANC
18 report. Is there an ANC representative here?

19 Okay. Please come forward.

20 MS. BROOKS: My name is --

21 CHAIRPERSON CROSS REID: Have you been sworn?
22 Did you just come in?

23 MS. BROOKS: I just came in.

24 CHAIRPERSON CROSS REID: Okay. You have to be
25 sworn in, ma'am, first.

1 MS. BROOKS: Okay.

2 CHAIRPERSON CROSS REID: So please stand up.

3 (Whereupon, the witness was duly sworn.)

4 MS. BAILEY: Thank you, ma'am.

5 MS. BROOKS: Thanks.

6 Good morning. My name is Doris Brooks. I'm ANC-
7 2C-03.

8 We feel that it's a very good idea for the United
9 House of Prayer to -- Parcel 42. We voted on it, and it was
10 unanimous, and we voted for this project.

11 Is there any questions you'd like to ask me?

12 CHAIRPERSON CROSS REID: There was a quorum?

13 MS. BROOKS: Oh, 626 S Street.

14 Yes.

15 CHAIRPERSON CROSS REID: There was a quorum?

16 MS. BROOKS: It was a quorum. We had a quorum,
17 and this was in June -- no, May. I'm sorry. It was in May,
18 and we are very pleased to have the United House of Prayer to
19 build because we're losing a lot of our people in the
20 neighborhood.

21 You have two and three and four generations of
22 people who want to stay in the Shaw area, and this is the only
23 way of us seeing us staying in the Shaw area because a lot of
24 them are going to lose their homes, and they want to stay
25 within the inner city. They've been there for 20 and 30 years.

1 They wouldn't know how to move out and start over. Their
2 friends are there. They're close to transportation, especially
3 our senior citizens, and children who have to go to school who
4 don't have to pay, buy school tickets, who are there right in
5 the elementary school, junior high school, and high school.

6 They don't want to leave their home in their
7 neighborhood, in their community, because a lot of them have
8 been inconvenienced concerning the development of the new
9 Convention Center, and they have just gotten disgusted. They
10 don't want to leave home. This is their home.

11 And I'm asking this Board to please consider this
12 because these people need to stay in the inner city because of
13 the convenience, because they are on fixed incomes. They don't
14 have to pay car fare.

15 It's like I said, they can always have a neighbor
16 that they can go to. It would be hard for them to move out to
17 another area and try to start a friendship with people that
18 they have had friendships with for 30 and 40 years.

19 CHAIRPERSON CROSS REID: Okay. Thank you very
20 much for your presentation this morning, your testimony.

21 Just a moment. I think they have questions.

22 VICE CHAIRPERSON RENSHAW: Yes, Ms. Brooks.

23 Thank you, Madame Chair.

24 The letter that we received from ANC-2C signed by
25 the Chairman, Commissioner Lawrence Thomas, indicated that your

1 meeting was on Wednesday, June 6th.

2 MS. BROOKS: Yes.

3 VICE CHAIRPERSON RENSHAW: At 6:30, and you voted
4 an approval. Can you tell us the vote because the letter does
5 not contain the vote? Do you remember the vote?

6 MS. BROOKS: Okay. There was six of us. There
7 was --

8 VICE CHAIRPERSON RENSHAW: There were six
9 Commissioners --

10 MS. BROOKS: No, I'm sorry. No, we had six ANCs
11 in our ANC. Okay. One was missing. I'm sorry. There was
12 five. Myself, Chairman Lawrence Thomas, Vice Chair Leroy
13 Phillip, ANC Lydia Goring, and Alex Pedro.

14 And myself, Lawrence Thomas, and Leroy Thorpe
15 voted for the project, and Lydia Goring and Alex Padro was
16 against it. So it wasn't a unanimous vote.

17 VICE CHAIRPERSON RENSHAW: So it was three to
18 two, three to two to one?

19 MR. GREEN: Madame Chair, I'm sorry to interrupt
20 her, but we were present at ANC 2C. There were two meetings.
21 One was on a Parcel 42, which she inadvertently referred to.
22 This was on 626 S Street, and the vote was unanimous.
23 Commissioner Padro, who is the Single Member District
24 Commissioner, offered the motion, and the vote was unanimous.
25 All of the Commissioners present voted for this.

1 MS. BROOKS: Six, twenty --

2 MR. GREEN: Six, twenty-six. Commissioner Padro
3 offered the motion.

4 CHAIRPERSON CROSS REID: I think --

5 MS. BROOKS: I thought you were talking about
6 Parcel 42. I'm sorry.

7 CHAIRPERSON CROSS REID: No. That's okay.
8 That's okay. I think we're straight now that there was --

9 MS. BROOKS: Yes, all --

10 CHAIRPERSON CROSS REID: All members ere present,
11 and that there was --

12 MR. GREEN: It was an unanimous vote.

13 CHAIRPERSON CROSS REID: -- unanimous approval.
14 There was a quorum.

15 VICE CHAIRPERSON RENSHAW: So it was six to
16 nothing?

17 MR. GREEN: That's correct.

18 MS. BROOKS: Yes.

19 VICE CHAIRPERSON RENSHAW: All right, and just
20 the same, Ms. Brooks, Commissioner Thomas' letter does not
21 indicate that you are going to be delivering the good news here
22 today about the vote. In other words, the letter should have
23 said that you were going to represent the ANC at this meeting.

24 MS. BROOKS: Well, Mr. Thomas had said -- had a
25 lot of things he had to do because he runs the recreation

1 center, and I will see that they get the -- your decision by
2 telephone or by going, you know, to see them.

3 VICE CHAIRPERSON RENSHAW: If he on behalf of the
4 Commission would just fax that you were authorized to deliver
5 the testimony today just so that we can put it in our file.

6 Thank you.

7 MS. BROOKS: I'm pleased to.

8 CHAIRPERSON CROSS REID: Thank you. Thank you
9 very much.

10 MS. BROOKS: thank you.

11 CHAIRPERSON CROSS REID: All right. If there are
12 no other government reports, we'll go to persons in support of
13 the application.

14 MS. BAILEY: Madame Chair, unless I'm mistaken,
15 although parking is not required, there was a DPW report.

16 CHAIRPERSON CROSS REID: Okay. All right. I
17 don't have it.

18 VICE CHAIRPERSON RENSHAW: Here it is.

19 CHAIRPERSON CROSS REID: Do you have it? Oh, no,
20 no. I'm sorry. I overlooked it, that there was no objection.

21 A DPW report saying that July 3rd from Kenneth
22 Layton, saying that -- in pertinent part it talks about the
23 application and what the proposal -- demolish the existing
24 building and to provide a new apartment building with
25 apartments for 17 units, and the issue of the parking from

1 providing five to six spaces.

2 Essentially the DPW has no objection to this
3 application.

4 Okay. Now, persons in support.

5 (No response.)

6 CHAIRPERSON CROSS REID: All right. Persons in
7 opposition, parties in -- persons in opposition.

8 (No response.)

9 CHAIRPERSON CROSS REID: All right. Closing
10 remarks by the Applicant.

11 MR. GREEN: Thank you, Madame Chair.

12 If I just may offer a brief closing comment, we
13 first want to thank you for the gracious opportunity you've
14 extended to us to appear before you today on behalf of Bishop
15 S.C. Madison of United House of Prayer to offer this proposal,
16 and I would hope that you would give great weight to the whole
17 purpose of this application, and that is to do our small part
18 to add to the stock of affordable housing, and that's been the
19 whole concept behind the instructions that Bishop Madison has
20 given to our architect.

21 We, of course, could build maybe one or two
22 townhouses, but the concern has been to build the most we can
23 to have the biggest impact on the most people who badly need
24 housing in the District of Columbia.

25 As you know, it's a matter of whether two

1 families have affordable housing in townhouses or whether 15
2 houses have affordable housing, and Bishop Madison is concerned
3 to do the most with the resources that we have so that he can
4 benefit perhaps 15 families.

5 And the United House of Prayer has had a concern
6 about the quality of living. Bishop Madison not only provides
7 housing, and you know there are a lot of housing providers in
8 this city, but he's concerned about the quality of people's
9 living, and I think that's important to note.

10 He walked through this building himself, the old
11 structure, and he looked at the ill configured rooms, how small
12 they were, and there are some landlords that would have no
13 problem in just renting it just like it was, and never mind the
14 quality of living for the persons who have to live there.

15 He was concerned. He said, "No, I'm not going to
16 let my people live in conditions like this. Build it new."

17 And so we would really welcome your support as a
18 Board so that we could provide some decent living for the
19 families.

20 Now, the building that Ms. Reatig is presently
21 building at 1731 Seventh Street has a washer in each unit, a
22 dryer in each unit, a dish washing machine in each unit. This
23 is affordable. This is what Bishop Madison considers
24 affordable living, and as you know, some landlords who provide
25 affordable living give you the bare bones, and Bishop Madison

1 wants to go beyond that. He's concerned about the quality of
2 life even for those who are least among us and who can least
3 afford housing in the District of Columbia, and we would
4 welcome your support.

5 Thank you, Madame Chair.

6 CHAIRPERSON CROSS REID: Thank you.

7 All right. Board members, discussion?

8 MEMBER LEVY: Madame Chair, I am still confused
9 regarding the lot occupancy and the matter of hardship relative
10 to the lot occupancy. Are we talking about 40 percent coverage
11 or 60 percent coverage at this point?

12 CHAIRPERSON CROSS REID: Well, I think that's
13 what is open to discussion. There seems to be some discrepancy
14 between the Office of Planning and the Applicant.

15 I think the Applicant is for going by what was
16 proposed by Toya Bellow.

17 MS. REATIG: Yes, I did request a variance in lot
18 occupancy because I knew that with our design, we are not
19 making the lot occupancy, and we are asking for a variance in
20 lot occupancy.

21 CHAIRPERSON CROSS REID: And I think, Board
22 members, Ms. Mitten especially had some concern about that. Do
23 you want to further discuss it?

24 MS. REATIG: Can I just add one sentence before
25 closing?

1 CHAIRPERSON CROSS REID: Sure. Go ahead.

2 MS. REATIG: Thank you for the opportunity to
3 represent this case.

4 Density is very important for a city. Cities
5 that are the most successful or that are really cities like New
6 York, Paris, London are dense.

7 Washington, D.C. used to be denser than now, and
8 now people are moving into the city, and density is one of the
9 most important elements that the city needs to thrive.

10 So it's not just for United House, but I feel
11 that it's important to bring more people to the city and
12 provide more housing, and the areas that are the most desirable
13 are the one near the Metro station, and this property is just
14 across from the Metro station.

15 And it's not feasible for the city to have single
16 family houses or just one townhouse because the lots, they have
17 much more value, and they should have much more people,
18 especially close to the subways.

19 And I know that this discussion is going now with
20 Tenleytown, and so I read in the paper. And so I really hope
21 that not just in this area, but in other areas there will be
22 more density near the subways.

23 Thank you.

24 MEMBER GRIFFIS: Madame Chair, if I may comment,
25 I absolutely agree with you in terms of density and the

1 appropriateness in an urban setting, especially in great
2 proximity to the Metro station.

3 To that, you brought up two issues in closing.
4 One is the quality of living in terms of the quality of housing
5 provided, and density, and we are, of course, discussing the
6 lot occupancy and trying to get clarification on that.

7 Can you speak just briefly, going back to the
8 importance of the courtyard and the size of it, and why perhaps
9 you haven't actually go for a larger lot occupancy, and maybe a
10 more typical I shaped building with a center core and two
11 stairs as opposed to three entrances?

12 MS. REATIG: Okay. I had two goals. One is to
13 provide as many units as I can and covering about 60 percent of
14 the lot, and the other one was to provide light and ventilation
15 to each unit from at least two sides.

16 So we studied all of these possibilities, and
17 that's where we came with the best apartments and the best
18 quality of life that we can do on this site, provided the most
19 units.

20 You see, yes, I can go just like with one bar or
21 an I or a T or different, but we wanted to provide the parking.

22 We have also the setback in the back that we have to have 20
23 feet and also we needed to provide parking.

24 So putting all of this together, that's what we
25 came to, and the configuration, the court size is adequate. It

1 will be nice and kind of intimate, and this building that we
2 are talking about on Seventh Street is an L shaped building,
3 has eight units. The size of the lot is about the same. It's
4 45 feet wide, but the depth is only 80 feet, and there we are
5 providing eight units, and the court, it's already -- you can
6 see the three stories. It's in construction, and the court is
7 very pleasant. The scale is quite nice.

8 You used the word "intimate" in terms of the
9 courtyard, although you have a 20 foot opening going into it.
10 Is there any idea of how you're actually going to close that
11 off to --

12 MS. REATIG: There will be a gate.

13 MEMBER GRIFFIS: There will be a gate.

14 MS. REATIG: A gate.

15 MEMBER GRIFFIS: So it will be accessible by the
16 residents only?

17 MS. REATIG: Yes, correct.

18 MEMBER GRIFFIS: So it would be on a card reader
19 or some sort of locking?

20 MS. REATIG: Yes.

21 MEMBER GRIFFIS: Okay.

22 CHAIRPERSON CROSS REID: Any further discussion?

23 COMMISSIONER MITTEN: Madame Chair, I agree
24 completely with the things that the Applicant has said about
25 the need for affordable housing in the city and the need to

1 provide density in proximity to Metro stations, and I think all
2 of that is very valid.

3 Unfortunately, we have an R-4 zoned site within
4 a half a block of a Metro station, and I have to say I haven't
5 heard -- I don't believe that the Applicant has met their
6 burden of proof as it relates to this site being zoned R-4.

7 Now, whether R-4 is the appropriate zone for this
8 site I think is definitely open to debate, but given that the
9 site is zoned R-4, I just don't think there's been an adequate
10 showing of an unusual condition, and I don't think there's been
11 an adequate showing of unusual hardship.

12 But I would encourage them, depending on what
13 happens with the decision of this Board to seek a rezoning to a
14 higher zone.

15 MS. REATIG: Can I respond to that?

16 CHAIRPERSON CROSS REID: Yeah.

17 MS. REATIG: There is an apartment building on
18 the site already. It's not that it was an empty site of R-4.
19 There is an apartment building there.

20 The client can or the owner can renovate this
21 building and still use it as an apartment building. The only
22 thing is that it will cost him a hardship to renovate it, and
23 he will get less than if he will build another apartment
24 building.

25 We are not asking to build something that was not

1 there. We are asking to build another apartment building,
2 demolish this one and build another one that is better and
3 provides more units and to have a project that will be feasible
4 economically.

5 So I agree 100 percent that if it was just an R-
6 4, an empty lot, yes. Why allowing someone on R-4 to come and
7 build an apartment building?

8 But there is an apartment building already there.
9 The question is to renovate it or to have a better building, a
10 new apartment building that will be better. That's really the
11 difficulty.

12 CHAIRPERSON CROSS REID: I think that I'd like to
13 move that we approve this application. I think that the
14 Applicant has met his burden of proof. I think that in regard
15 to the three pronged test for a variance that it has been
16 demonstrated that the property is unique. The configuration,
17 the narrowness of the site, is unique.

18 It has been demonstrated that the only other two
19 properties that are similar properties to this particular
20 property have apartments buildings on it as well, and I think
21 the practical difficulty and undue hardship comes from the fact
22 that to renovate the building would be prohibitively expensive.

23 Also, it would only render six units, and those
24 units would be such a small size that they would be almost
25 uninhabitable, you know, for the human condition, and that

1 there is no opposition; there is no adverse impact as far as
2 air, light, parking, traffic, noise is concerned. There's no
3 income to oppose this application. The ANC is in favor of it.

4 The Office of Planning is in favor of it. The DPW is in favor
5 of it.

6 And given the fact that the circumstances in
7 regard to the fact that we all know that there is a dearth of
8 affordable housing in the District, this is a community that is
9 in transition. There's quite a bit of blight in that area
10 still, although the Applicant has been responsible for quite a
11 bit of affordable housing provision; that we have to look
12 beyond just the fact that there may be -- even if there is some
13 dispute as to the lot occupancy, I think that overwhelmingly
14 the case warrants approval due to the fact that it will
15 contribute positively to that neighborhood; and that, more
16 importantly, that the burden of proof has been met as far as
17 the three prong test is concerned.

18 There's no second, even for discussion?

19 Okay. All right. Then the motion fails for lack
20 of a second.

21 All right. Further discussion or a motion.

22 COMMISSIONER MITTEN: Madame Chair, I move that
23 we deny this application for the reasons that I stated earlier,
24 that I don't believe the Applicant has met their burden of
25 proof.

1 I think that the provisions in the R-4 zone that
2 allow for conversion of existing buildings is really about
3 preserving buildings that are there and making an accommodation
4 for buildings that are too large to otherwise meet the
5 requirements of the R-4 zone.

6 And I agree with you that there is a dearth of
7 affordable housing in the city and that Shaw has been really
8 put through the mill because of the Convention Center, and yet
9 I just can't overcome the fact that if we are to protect the
10 intent of the zoning map and the zoning regulations, that this
11 is too great a departure from the R-4 zone requirements without
12 a sufficient showing of the unusual condition or undue
13 hardship.

14 CHAIRPERSON CROSS REID: You don't think that it
15 would be an undue hardship to renovate the existing apartment
16 building?

17 COMMISSIONER MITTEN: That's not the only option
18 available.

19 CHAIRPERSON CROSS REID: The other option is to
20 put two townhouses, but to put two townhouses would be a great
21 under utilization of that lot when there's a need for housing
22 there.

23 COMMISSIONER MITTEN: But the test is not if you
24 didn't build what could be permitted by right, what else could
25 you have. Otherwise we'd have large buildings all over the

1 city. That's not the test.

2 CHAIRPERSON CROSS REID: No, and I didn't say
3 that it was. What I said was given the options that they have
4 available to them either to renovate the existing apartment
5 building, which would be prohibitively high, and it would not
6 render but six units, smaller units, which would be almost
7 virtually uninhabitable when they put in the heating and air
8 conditioning systems, or to put two townhouses.

9 And to put two townhouses on that, we know that
10 there was already an apartment building there, but then to
11 replace it with two townhouses, only using, I think, she said
12 20 percent of the lot occupancy, and the rest of the lot is
13 just unutilized, I just think that that is where the practical
14 difficulty -- it is my opinion that that causes the practical
15 difficulty.

16 MEMBER LEVY: Madame Chair, my concern -- in some
17 ways I echo Ms. Mitten's remarks, but my concern is not so much
18 with the Applicant not having met the argument for hardship
19 relative to use, but to the fact that the permitted lot
20 occupancy appears to be 40 percent as opposed to the 60 percent
21 that they're proposing, and I don't see where they've made an
22 argument that's addressed that at all.

23 Regardless of the reason, there seems to be some
24 confusion and some disagreement with the information that came
25 out of the Office of Planning, but nevertheless I don't see

1 where the Applicant has addressed that issue.

2 CHAIRPERSON CROSS REID: Well, I think that that
3 being the case, if that is the overwhelming problem here, then
4 perhaps we should contact DCRA and get an opinion as to what,
5 in fact, their intention was; that we feel that it was
6 incorrect.

7 Toya Bellow is the one responsible for rendering
8 decisions, and if there's a problem with his decision, then I
9 think that before just turning down this application that we
10 then would postpone a decision until we get his explanation as
11 to what his intention was or what his interpretation of that
12 particular lot occupancy decision was, why he had that
13 particular position.

14 I'm not really sure, but there is a discrepancy.
15 I think that that is undeniable.

16 MS. REATIG: Can I respond to that, please?

17 CHAIRPERSON CROSS REID: Well, you're not
18 supposed to because we're in the midst of a motion at this
19 particular point in time. So we really can't take --

20 MS. REATIG: Okay.

21 CHAIRPERSON CROSS REID: -- any input from the
22 Applicant.

23 VICE CHAIRPERSON RENSHAW: Madame Chair, I have
24 great sympathy for the Applicant and the concern that the
25 Applicant has for the community and wanting to provide as much

1 affordable housing as is possible with this application, but we
2 are constrained by the regulations under 403.2 that speaks to
3 40 percent in an R-4, and I'd like to ask Ms. Mitten, as
4 Chairperson of the Zoning Commission, what it would take for
5 the Applicant to get this parcel rezoned, if that is an option.

6 COMMISSIONER MITTEN: Well, when you say what
7 would it take, what do you mean precisely?

8 VICE CHAIRPERSON RENSHAW: What is the process?

9 COMMISSIONER MITTEN: Well, they'd have to make
10 an application, and that would have to be set down for public
11 hearing, and it would have to be -- we would require a report
12 from the Office of Zoning -- the Office of Planning rather to
13 weigh in on whether or not they were in favor of such a
14 rezoning.

15 I honestly think the whole area needs to be
16 examined because you have a fairly significant R-4 component in
17 close proximity to the Metro station there, and you also have a
18 lot of apartment buildings that are existing.

19 So I think the whole area bears re-examination,
20 but there's a couple of alternative zonings that would be
21 available, and I think it's worth pursuing.

22 I wouldn't want to suggest that any results are
23 guaranteed, but in response -- and this I see as an extension
24 of what Ms. Renshaw is asking -- in response to what the Chair
25 said a few minutes ago about, you know, their goal of providing

1 a significant amount of affordable housing, my opinion is this
2 just -- with the zoning in place, this isn't the site to
3 accomplish what they seek to accomplish. It's the wrong site.

4 So that doesn't mean because they can't do what
5 they want to do that there aren't other economic uses of the
6 property. It's just there are more appropriate places to put a
7 16 unit apartment building is my view.

8 CHAIRPERSON CROSS REID: Well, okay, but I think
9 that there are a couple of things we should look at.

10 One is if, in fact, we went the route of
11 rezoning, how long would that take?

12 COMMISSIONER MITTEN: I would say to be realistic
13 it would take a minimum of six months.

14 CHAIRPERSON CROSS REID: Okay. That's one thing.

15 The other thing is the reason why we have the
16 whole concept of variances and special exceptions is for the
17 purpose of giving relief to Applicants who come before us, and
18 it is based upon our own interpretation and what we feel is
19 adequate in their presentation that would then convince us or
20 persuade us to make a decision as to whether or not we feel
21 that they have made -- their particular application to us has
22 been strong enough or their argument has been strong enough.

23 And I, as one Board member, feel that they
24 definitely have and that they should be given a variance, the
25 variances that they are seeking, because I think that they have

1 demonstrated that they have met their burden of proof, and that
2 is what we're here for, not to make a decision as to whether or
3 not we feel that the zoning in place is appropriate or not
4 appropriate.

5 I agree with you. That is not our call. Our
6 call is to see whether or not, given the zoning and the fact
7 that the zoning was promulgated in 1958, that that zoning may
8 not have been sensitive to some of the social problems that we
9 now face today in regard to drugs, homelessness, or affordable
10 housing, or some of the things that plague us, and take that
11 into consideration when we're making our decisions and giving
12 consideration to all of the citizens of the District of
13 Columbia.

14 And I further feel that in regard to this aspect
15 of the zoning -- I mean of the lot occupancy, that there has
16 been some discrepancy regarding this lot occupancy matter, and
17 as such, that needs to be straightened out before we go any
18 further, and to consider either rezoning or have Bellow to
19 explain to us what he meant because not only did Bellow say it,
20 but it also was reflected in the Office of Planning report.

21 So we have two different entities of the District
22 of Columbia government saying, in effect, the same thing, and
23 then we're saying something different, and when that comes up,
24 I think that in all fairness to the Applicant, that we should
25 take out the time, rather than make a decision today, since

1 there is so much opposition in the Board to granting this
2 variance, that we give them the benefit of the doubt and allow
3 them to get additional information, to explore rezoning, and
4 make a decision at our next regularly scheduled Board meeting.

5 COMMISSIONER MITTEN: I would withdraw my motion,
6 Madame Chair, with that recommendation.

7 MEMBER GRIFFIS: I would also support that
8 recommendation, and I would say that there might be two things.

9 I think that they ought to look at the rezoning process, but
10 also look at the case that's before us today, as you mentioned,
11 getting the specifics of the lot occupancy.

12 And also I would stress the fact that I'm having
13 a difficult time looking at the hardship based on a demand for
14 a housing type. I think the Board, myself I can say
15 definitive, supports the objective of building affordable
16 housing.

17 But once we start to create the hardship case
18 that there is a demand, that opens up to me the door. I'm not
19 sure we can decide it on that, for one. It also opens up the
20 door to an economic hardship on any level in that a lot that
21 may not support a substantial amount of luxury units could be
22 argued that there needed to be an increase in density in order
23 to support the pro forma that a developer has put together.

24 So I think a reevaluation and a look at that
25 would be very important on this case.

1 CHAIRPERSON CROSS REID: I think that you're
2 right. I think that we should not and we have not heretofore
3 based undue hardship based on economic hardship, but we did
4 look at in the case of what was the issue with the Georgetown
5 incinerator case, where we did not look at economic hardship,
6 but we looked at the parameter that inadvertently would cause
7 some financial problems because of the existing zoning
8 regulations, and in this instance that was what I was going to
9 because the whole aspect of undue hardship invariably pertains
10 to some type of loss or some type of detriment to the
11 Applicant, and I think that is what we need to stress, is if
12 there is some type of detriment.

13 The detriment, I would say, Mr. Griffis, would
14 certainly be the fact that I think we all can agree that every
15 citizen in the District of Columbia is entitled to have some
16 kind of decent housing, and a 350 square foot unit that will be
17 further decreased by the heating and air conditioning unit is
18 not what I would want to see be provided for anyone here in the
19 District of Columbia as an affordable housing unit.

20 We're not talking about homeless people. I'm
21 talking about just regular, everyday citizens who may be low
22 income.

23 MEMBER LEVY: Madame Chair.

24 CHAIRPERSON CROSS REID: Yes.

25 MEMBER LEVY: If we choose to postpone a vote on

1 this matter to clarify the lot occupancy information, will the
2 Applicant be provided another opportunity or an opportunity to
3 then either represent her design or redesign based on the new
4 information?

5 CHAIRPERSON CROSS REID: That's up to the Board.

6 If the Board feels that that would be something you'd like to
7 see, then you certainly have the wherewithal to be able to make
8 that request.

9 MEMBER LEVY: I think it would be important
10 because I think that otherwise they would be at a disadvantage
11 in terms of I think there's a lot of good things about this
12 project, and it's an important project in a lot of ways, and
13 I'd like to see that they have a fair opportunity to present
14 their case with correct information at hand.

15 CHAIRPERSON CROSS REID: Okay. Well, if the
16 Board members agree, then what we can do is to have a
17 continuation of this hearing in that we have not voted to allow
18 them to -- Mr. Hart, is there a time that we could allow them
19 to provide us with the additional information that's being
20 requested?

21 We can request from Toya Bellow his explanation
22 as to why we have this discrepancy, one, and, two, I think Mr.
23 Levy is requesting that the architect present another -- the
24 picture of a design based upon the information that comes from
25 Bellow.

1 Is that my understanding?

2 MEMBER LEVY: Right.

3 CHAIRPERSON CROSS REID: Or do you want to
4 clarify?

5 MEMBER LEVY: Well, following -- yes, a
6 clarification by the Office of Planning that the architect have
7 the opportunity to re-present the design if she so chooses or
8 if the Applicant so chooses.

9 CHAIRPERSON CROSS REID: And that would be the
10 only portion that we would have at the next opportunity, is
11 just to give the architect an opportunity present another
12 design. That would be about --

13 COMMISSIONER MITTEN: Well, I think Mr. Levy's
14 point is that he'd like to give them the opportunity to meet
15 their burden of proof --

16 MEMBER LEVY: Exactly.

17 COMMISSIONER MITTEN: -- as it relates to the lot
18 occupancy issue.

19 CHAIRPERSON CROSS REID: Well, that's exactly
20 where I was going with this. That's the whole purpose of it.
21 I think I understood where he was going with this, that that's
22 what he wanted him to do. In order to be able to meet their
23 burden of proof, he would have to see the redesign that he
24 requested, as well as we would like to see what Bellow has to
25 say.

1 COMMISSIONER MITTEN: But his point is not
2 necessarily a redesign. If that's what's necessary for them to
3 meet the burden of proof, but they may be able to --

4 CHAIRPERSON CROSS REID: Okay.

5 COMMISSIONER MITTEN: -- with the existing
6 design.

7 CHAIRPERSON CROSS REID: Okay. Let -- let me
8 backtrack here. First, we want to get the explanation from
9 Bellow, and if it's deemed necessary, then the architect would
10 have the opportunity to present something else.

11 MEMBER LEVY: If deemed necessary by the
12 Applicant, at the Applicant's discretion.

13 CHAIRPERSON CROSS REID: If deemed necessary by
14 the Applicant, then they would have the opportunity to re-
15 present something predicated upon what comes out of the Bellow
16 request.

17 MEMBER LEVY: Or just to re-present with the same
18 design if they feel they can meet the burden of proof for
19 hardship.

20 CHAIRPERSON CROSS REID: If -- okay. You
21 understand it? Either way, you'll be given another opportunity
22 to come back and to present to us if, in fact, you feel that
23 Mr. Bellow has given enough information or you feel that you
24 can make a stronger case or to present something to us that
25 would bolster your request for the relief that you're

1 requesting to this Board.

2 MS. REATIG: Yeah, okay. I feel that there is a
3 communication failure. I did request in my application, I did
4 request for occupancy variance. This is one of the items that
5 I requested.

6 There was a discrepancy between the
7 interpretation, 40 percent or 60 percent, but my coverage is
8 different, and I did increase it, and I did request, and that's
9 why I'm coming before the Board, because I'm not meeting the 40
10 or 60 percent. So that's why I came before -- one of the
11 issues that I came before the Board.

12 So I really don't think that it will make a
13 difference if it's 40 or 60 because I requested a variance for
14 the lot occupancy, and I think that that was your question, if
15 I did request a variance.

16 MEMBER LEVY: Madame Chair, may I respond?

17 CHAIRPERSON CROSS REID: Sure.

18 MEMBER LEVY: I don't think there was -- there's
19 no misunderstanding that you request a variance for lot
20 occupancy. The problem that I'm having is that I am required
21 to decide whether the Applicant has met the burden of proof for
22 hardship relative to that variance for lot occupancy.

23 And I think that perhaps because of the confusion
24 between the 40 percent and the 60 percent requirements, that
25 perhaps that you weren't prepared to argue the burden of proof

1 for that, and then I'm not convinced that you have argued the
2 burden of proof for that.

3 At the same time, I think that there are a lot of
4 positive things about the project, and I think that a
5 continuance would be in your best interest.

6 VICE CHAIRPERSON RENSHAW: Madame Chair, I would
7 also like to ask that the Officer of Planning redo its
8 paragraph having to do with lot occupancy based on what Mr.
9 Bellow has to say because the Office of Planning, and this is
10 on page 4 of its report, it stated:

11 "In conversations with the Office of Zoning
12 Administrator, it was conveyed to the Office of Planning that
13 it is their interpretation that the proposal is for a row
14 dwelling with multiple dwellings."

15 And we have questions about that, that the lot
16 occupancy requirement is 60 percent. So I would like the
17 Office of Planning to look again at this paragraph and adjust
18 it.

19 CHAIRPERSON CROSS REID: And then it says that a
20 variance is not required.

21 VICE CHAIRPERSON RENSHAW: Exactly.

22 CHAIRPERSON CROSS REID: At all.

23 VICE CHAIRPERSON RENSHAW: Exactly, but I would
24 like the Officer of Planning to adjust this paragraph based on
25 what Mr. Bellows has to say in his explanation.

1 CHAIRPERSON CROSS REID: Okay.

2 MEMBER GRIFFIS: Madame Chairman, one other item.

3 Also when you come back, I would take a look at the parking
4 requirements. It's my understanding in the R-4 in the
5 proximity of 800 feet with Metro you actually get a 25 percent
6 reduction, which may actually reduce the number of spaces that
7 you need.

8 If it's one per three, you are required to have
9 six at 17 units, but if you reduce it 25 percent, you may be
10 able to do away with -- I don't know. My math isn't great
11 today -- but one or two.

12 CHAIRPERSON CROSS REID: Any other discussion?

13 MS. SANSONE: Madame Chair, since we're doing
14 some housecleaning, I think everyone is clear that this is a
15 use variance, but there is a provision in 2002.6. "A new
16 structure shall not be erected to house a new nonconforming
17 use," or "to house a nonconforming use," not a new one. That
18 would just go along with the request for the use variance from
19 the Chapter 3 provisions about apartment houses.

20 CHAIRPERSON CROSS REID: Okay. Throw that in,
21 too.

22 MEMBER LEVY: Just so that we --

23 CHAIRPERSON CROSS REID: Is that right, Ms.
24 Sansone?

25 MS. SANSONE: Yes.

1 CHAIRPERSON CROSS REID: It would go to that
2 2003.

3 MS. SANSONE: Yes, Madame Chair. It sort of just
4 complements. They asked for the variance from I guess it was
5 330.5 to allow the demolition and replacement. It wouldn't
6 alter any -- I mean, the burden of proof still stays the same
7 for the use variance. It's just a more complete description of
8 what they need.

9 CHAIRPERSON CROSS REID: Okay.

10 MEMBER LEVY: Madame Chair, just one other point
11 that hasn't been discussed and for my own clarification so that
12 there's not another issue hanging out there, and that is the
13 roof height. What is the level?

14 CHAIRPERSON CROSS REID: Well, I thought that
15 that was clarified. The architect was asked by Mr. Griffis.

16 MEMBER LEVY: I was more concerned about the
17 overall roof height rather than the separate stair enclosures.

18 CHAIRPERSON CROSS REID: What's the question?
19 I'm sorry.

20 MEMBER LEVY: They're showing a roof height of 40
21 feet, six inches to the parapet. Is that allowable? Is that
22 permitted?

23 MEMBER GRIFFIS: Right. It was a clarification I
24 would bring up. Looking at the elevations that were submitted
25 today, there's a 40 foot, six inch to the top of parapet. Now,

1 based on the building height, how you measured it, it actually
2 -- I don't recall the exact section, but it's to the ceiling of
3 the top floor. So I was just --

4 MS. REATIG: The building is three stories high.

5 MEMBER GRIFFIS: Right. Three story and 40 feet
6 is the regulation requirement, and so how you measure the
7 height of your building. Looking at that with the top of a
8 parapet at four stakes, I was estimating with the elevation
9 that we saw four feet for the stair house -- the penthouse.
10 The ceiling height would have had to have been substantially
11 below 40.

12 MEMBER LEVY: Okay. Thank you.

13 CHAIRPERSON CROSS REID: Yeah, because I thought
14 that had been addressed. Okay.

15 MEMBER LEVY: I just wasn't clear on that.

16 CHAIRPERSON CROSS REID: Sure, sure.

17 MEMBER LEVY: And I appreciate --

18 CHAIRPERSON CROSS REID: Sure, absolutely.

19 MEMBER LEVY: That makes perfect sense.

20 CHAIRPERSON CROSS REID: Absolutely, and feel
21 free to ask any questions that you need to to, you know, get
22 clarifications. I will submit to you that it does become
23 rather complicated and kind of confusing at times. So feel
24 free to do so.

25 Now, Mr. Hart?

1 MR. HART: Yes, Madame Chair. Given -- okay.
2 The first possible date to come back in for what I would
3 consider continuation would be September 11th.

4 CHAIRPERSON CROSS REID: September 11th.

5 MR. HART: In the morning.

6 CHAIRPERSON CROSS REID: We go into recess for
7 the month of August, and we only have two more sessions, I
8 think, for this month. So would September 11th be a date that
9 could be lived with by the Applicant?

10 Okay. At what time?

11 MR. HART: It would be the morning session, which
12 starts at 9:30.

13 CHAIRPERSON CROSS REID: Nine, thirty. Okay, all
14 right. So now are we all clear as to what is being asked of
15 you?

16 I'll tell you. If you have any questions, then
17 see Mr. Hart of our staff to make sure that are you clear as to
18 what is expected and be prepared for the September 11th meeting
19 -- I mean hearing.

20 Okay. Any other comments, questions?

21 (No response.)

22 CHAIRPERSON CROSS REID: All right. Thank you
23 very much.

24 MR. GREEN: Madame Chair, we just want to thank
25 you again for your consideration, and thank you for the

1 comments and advice of the members of the Board. We'll do our
2 best to meet the target that you set for us on September 11th.

3 Thank you so much.

4 CHAIRPERSON CROSS REID: We appreciate that.
5 Okay. Thank you very much.

6 That then will conclude this morning's hearing
7 unless there are any comments, questions.

8 Okay. Thank you very much.

9 (Whereupon, at 11:31 a.m., the meeting was
10 recessed for lunch, to reconvene at 1:00 p.m., the same day.)

11

AFTERNOON SESSION

(1:17 p.m.)

CHAIRPERSON CROSS REID: Good afternoon, ladies and gentlemen. This is the July 17th public hearing of the Board of Zoning Adjustment.

My name is Sheila Cross Reid, Chairperson. Joining me today is Anne Renshaw, Vice Chairperson, and Jeff Griffis.

Also joining us for the first time is David Levy, who is representing the National Capital Planning Commission, taking Susan Hinton's place.

And representing the Zoning Commission is Carol Mitten.

Copies of today's hearing are available to you. They are located to my left near the door.

All persons planning to testify in favor or in opposition are to fill out two witness cards. These cards are located on each end of the table in front of us.

When coming forward to speak to the Board, please give both cards to the reporter, who is sitting to my right.

The order of procedure for special exception and variances is:

One, statement of witnesses of the Applicant;

Two, government reports, including Office of Planning, Department of Public Works, et cetera.

1 Three, report of the Advisory Neighborhood
2 Commission;

3 Four, parties and persons in support;

4 Parties and persons in opposition;

5 Closing remarks by the Applicant.

6 The order of procedure for appeal applications
7 will be as follows:

8 One, statement of witnesses of the Appellant;

9 Two, the Zoning Administrator or other government
10 official;

11 Three, the owner, lessee, or operator of the
12 property involved, not the Appellant;

13 Four, the ANC in which the property is located;

14 Five, the Intervenor's case;

15 And, six, rebuttal and closing remarks by the
16 Appellant.

17 Cross examination of the witnesses is permitted
18 by the Applicant or parties. The ANC within which the party is
19 located -- the property is located is automatically party in
20 the case.

21 The record will be closed at the conclusion of
22 each case, except for any material specifically requested by
23 the Board, and the staff will specify at the end of the hearing
24 exactly what is expected.

25 The Sunshine Act requires that the public hearing

1 on each case be held in the open before the public. The Board
2 may, consistent with its rules of procedure and policy and
3 procedures -- the Sunshine Act enter executive session during
4 or after the public hearing on a case for purposes of reviewing
5 the record or deliberating on the case.

6 The decision of the Board in these contested
7 cases is to be based exclusively on the public record. To
8 avoid any appearance to the contrary, the Board requests that
9 persons present not engage members of the Board in
10 conversation.

11 Please turn off all beepers and cell phones at
12 this time so as not to disrupt these proceedings. Put them on
13 vibrator.

14 The Board will make every effort to conclude the
15 public hearing as near as possible to six o'clock p.m. If the
16 Applicant's case is not completed by six o'clock p.m., the
17 Board will assess whether it can complete the pending case or
18 cases remaining on the agenda.

19 At this time, the Board will consider any
20 preliminary matters. Preliminary matters are those that relate
21 to whether a case will or should be heard today, such requests
22 for postponement, continuance, or withdrawal, or whether proper
23 and adequate notice of the hearing has been given.

24 If you are not prepared to go forward with the
25 case today or if you believe that the Board should not proceed,

1 now is the time to raise such a matter.

2 Are there any preliminary matters?

3 MS. BAILEY: Madame Chair, there are some
4 preliminary matters, but I would take -- staff is recommending
5 that those matters be taken up when the case is called, but for
6 the first case of the afternoon, there is line.

7 CHAIRPERSON CROSS REID: Okay. Thank you very
8 much.

9 Please call the first case of the afternoon.

10 MS. BAILEY: Application No. 16729 of Wayne Place
11 Senior LP Company, pursuant to 11 DCMR 3104.1, for a special
12 exception to all a new senior living apartment complex under
13 Subsection 353.1 and pursuant to Subsection 2102.3 for variance
14 from the floor area ratio requirements under Section 402, that
15 occupancy requirements under Section 403 and story limitation
16 requirements under Section 400 in an R-5-A district at premises
17 1114 -- I'm sorry -- 114 through 124 Wayne Place, S.E., Square
18 6118, Lots 42 and 43.

19 All those wishing to testify, would you please
20 stand? All those persons wishing to testify in this case,
21 please raise your right hand.

22 (Whereupon, the witnesses were duly sworn.)

23 MS. BAILEY: Members of the Board, the Office of
24 Planning has submitted a report. That report recommends
25 conditional approval of the application. A waiver is needed to

1 accept the report into the file.

2 In addition, a report was also filed from the
3 Department of Public Works, and we also have a report from the
4 Department of Housing.

5 ANC-8C has also submitted a report on this
6 project.

7 Madame Chair, the case is ready to go forward.

8 CHAIRPERSON CROSS REID: Okay, all right.

9 MR. GLASGOW: Good afternoon, Madame Chair and
10 members of the Board. My name is Norman M. Glasgow, Jr., of
11 the law firm of Holland and Knight, representing the Applicant,
12 Wayne Place Senior Living Limited Partnership. It's a
13 subsidiary operating under the auspices of the St. Paul
14 Community Development Corporation.

15 The subject property is located at Wayne Place,
16 S.E., and is located in an R-5-A district, and is just under
17 one acre in size.

18 The Applicant is requesting today a special
19 exception and variance relief in order to construct a 56 unit
20 senior living development in Ward 8.

21 Special Exception is required for R-5-A
22 apartments for new construction, pursuant to Section 3104.1 and
23 353.1. Variance relief is requested from the FAR story and lot
24 occupancy requirements of the R-5-A district.

25 Here with me today are Ms. Lisa Jackson, also

1 with the law firm of Holland and Knight, and she's standing
2 over to my left. She was previously with the Prince George's
3 County Office of Wilkes Artis before joining Holland and
4 Knight.

5 In addition here on behalf of the Applicant are
6 Brandon Bellamy, sitting to my immediate right; Carl Williams
7 and Charles McNear, and Carl is on the far right and Charles is
8 in the center.

9 Pardon me? Oh, I thought somebody asked a
10 question.

11 CHAIRPERSON CROSS REID: I was going to say
12 something, but did you just finish your opening statement.

13 MR. GLASGOW: No, I have not.

14 CHAIRPERSON CROSS REID: Okay.

15 MR. GLASGOW: Okay. St. Paul CDC has developed a
16 highly successful and acclaimed seniors living development
17 project off of Addison Road in Prince George's County and other
18 projects.

19 Next I'd like to introduce Bruce Kennett of the
20 architectural firm of Torti Galles CHK; Jay Spiegel of the
21 engineering firm of Greem and Peterson; and Steven Sher, a land
22 use planner with Holland and Knight.

23 Mr. Kennett and Mr. Sher are submitted as expert
24 witnesses in the field of residential architecture and land
25 planning, respectively.

1 Beginning with an overview of the case, I want to
2 confirm that the Board has a copy of the statement of Applicant
3 that was filed previously in this case. And I understand that
4 there were a series of reports that you have received.

5 CHAIRPERSON CROSS REID: yes.

6 MR. GLASGOW: The Office of Planning report, the
7 letter in support from the Advisory Neighborhood Commission 8C,
8 a copy of a letter from Council Member Allen. I don't recall
9 whether that was read off at the beginning.

10 CHAIRPERSON CROSS REID: We have.

11 MR. GLASGOW: All right, and a copy of DHCD's
12 letter in support of the application.

13 By way of background and proceeding with this
14 application, the Applicant and its representatives have
15 attended several community meetings, conducted two site visits
16 of the Addison Road facility with community and ANC
17 representatives. We are pleased that the ANC is in support of
18 the application and that the Applicant has received numerous
19 expressions of support and interest in the project from
20 community residents.

21 Before proceeding with the testimony of the
22 witnesses, I'd just like to give a brief opening statement.

23 We set forth in our statement of Applicant and as
24 set forth in the report of the Office of Planning, that the
25 Applicant has met all of the requirements set forth in Section

1 353 for the special exception relief for new residential
2 development in the R-5-A zoning district, and that's set forth
3 in the statement that we submitted in the text.

4 Concerning the variance relief, the Applicant
5 submits that the subject site is unique and affected by an
6 exceptional situations or conditions. The subject property is
7 affected by the topography, having a significant slope from
8 northwest to southeast along the Wayne Place frontage.

9 In addition, the regulations and comprehensive
10 plan encourage the provision of housing for all segments of the
11 District's population, and the Applicant notes that there are
12 only three facilities offering seniors housing in Ward 8.

13 This will be the first newly constructed such
14 facility in many years. Operation of the regulations on a
15 particular piece of property, particularly with a permitted
16 use, such as we have here for senior apartment living, and when
17 none has been provided also we believe is a unique or
18 exceptional situation or condition.

19 In order to provide the senior living facility
20 and to do so with a consistency of delivery of services with
21 the type of facilities and amenities that make for a quality
22 living environment at a reasonable cost that can be supported
23 by the market in the surrounding community, an FAR variance is
24 required.

25 Applicant notes that upon further analysis of its

1 plans the actual FAR for the site is approximately 1.45,
2 slightly less than what's in your packet of materials, and the
3 floor area is approximately 59,000 square feet.

4 That is due to the computations resulting from
5 the perimeter wall test, and it was certain area that was added
6 into the building that is non-FAR area originally, and that
7 would be on the northern frontage of the site.

8 Applicant submits that the number of the units,
9 therefore, the size of the building would be exactly the same.

10 It's just by virtue of the perimeter wall test that there are
11 slightly less building that is includable in FAR, but the
12 building that was filed with you, that building stays exactly
13 the same. All of that is the same.

14 Applicant submits that the number of units and
15 size of building are critical in order to proceed forward with
16 the project, and information in that regard was submitted to
17 the Office of Planning; that the 56 units will not be a burden
18 on the community in any fashion.

19 But it will instead be positive to the community,
20 and that position is supported by the Office of Planning, DHCD,
21 DCHFA, the Advisory Neighborhood Commission, and the ward
22 council member.

23 Similarly, Applicant has requested a variance
24 from the story limitations, and it is not the height
25 limitations in the R-5-A district. We comply with the height

1 limitations.

2 We have four stories on part of the site, as you
3 can look in the drawing. That would be to your left. The top
4 drawing you see three stories on the northern portion of the
5 site, and there are four stories on the southern portion of the
6 site.

7 So we have not asked for a height variance. We
8 are asking for a variance from the story limitation. In the R-
9 5-A district, you're permitted to have three stories. We have
10 four stories at the southern end of the site, three stories at
11 the northern end. And that is due to the slope of the site as
12 is shown on the drawing.

13 In addition, with respect to the FAR variance, it
14 is noteworthy that the subject property is located in the
15 moderate density residential district in the comprehensive plan
16 land use map, and we propose the FAR to be approximately 1.45.

17 It is noted in Office of Planning's report that
18 R-2, R-4, and R-5-B zoning is in close proximity to the site,
19 and if you would look at what the FAR is that's permitted in
20 each of those zoning districts, you would have -- now, there is
21 no FAR limitation in R-2.

22 But if you take the 40 percent lot occupancy with
23 three stories for R-2, you have a 1.2 FAR; R-4 with 60 percent
24 lot occupancy and three stories is 1.8 FAR, and the R-5-B
25 district would also be 1.8.

1 So the Applicant's proposed project at 1.45 FAR
2 fits neatly within the range permitted by those other zoning
3 classifications, which are all located in close proximity to
4 the subject site and have the same designation under the
5 comprehensive plan land use map.

6 Clearly, if the project is not able to proceed
7 and we need the relief that's requested, we have a practical
8 difficulty with respect to this property and Applicant's
9 ability to use it. The proposed use is a permitted use, as a
10 matter of right.

11 As is evident from the significant statements of
12 support for this project from the various District agencies,
13 the ANC, and the ward council member, the granting of this
14 relief is consistent with the comprehensive plan and can be
15 granted without substantial detriment to the public good and
16 without substantially impairing the intent and purpose of the
17 zone plan.

18 Lastly, the Office of Planning requested that
19 additional information be provided concerning the lot occupancy
20 variance, which is almost entirely due to the provision of the
21 port-cochere at the entry drive to the facility.

22 The design and land planning issues relate to
23 that request for relief. This design results in a very
24 practical solution of having a place above grade to locate the
25 condenser units which are shown on the plans. There are 12

1 condenser units on top of that port-cochere, which is on the
2 far right of the upper drawing to your left. They are hidden
3 behind that sloped roof area.

4 If they were not placed there, they would be at
5 grade level. There would be additional paving on the site
6 where they would be located. We don't think that this is a
7 particularly aesthetically pleasing solution.

8 The port-cochere covers a driveway, provides
9 streetscape continuity and security for the residence of the
10 project and a shaded area where residents can be picked up and
11 dropped off in addition to the main entrance. These will all
12 be explained by the architect and the land planner.

13 For these reasons we believe that the lot
14 occupancy variance should also be granted.

15 If there are no preliminary questions, I'd like
16 to proceed with the testimony of the witnesses.

17 CHAIRPERSON CROSS REID: Okay. Thank you very
18 much, Mr. Glasgow.

19 And before you have proceeded, I was going to
20 suggest that based on your submission, I think that I'm sure
21 all the Board members have read the materials that have been
22 submitted, and as such, I don't see any reason why you should
23 not be able to expedite your presentation before us.

24 Now, it may be a little late since you've already
25 given it.

1 (Laughter.)

2 CHAIRPERSON CROSS REID: But I think that what I
3 would rather do is allow the Board members, based upon their
4 having read the materials, to ask you any questions that they
5 might have, and if there are no questions, then we can just
6 proceed right on through and dispose of this fairly quickly

7 MR. GLASGOW: We are at your disposal.

8 CHAIRPERSON CROSS REID: Questions?

9 (No response.)

10 CHAIRPERSON CROSS REID: Okay. I'd like to
11 unless --

12 COMMISSIONER MITTEN: Madame Chair.

13 CHAIRPERSON CROSS REID: Oh, sorry.

14 COMMISSIONER MITTEN: I'm a little slow on the
15 draw, but I did have a question.

16 Mr. Glasgow, I think you mentioned the fact that
17 the number of the units and the size of the building are
18 critical to the success of the project.

19 MR. GLASGOW: That's correct.

20 COMMISSIONER MITTEN: And that you had submitted
21 information to the Office of Planning in that regard.

22 MR. GLASGOW: Correct.

23 COMMISSIONER MITTEN: And the issue about
24 feasibility is important to the burden of proof. Is that
25 something you could submit to us as well?

1 MR. GLASGOW: Yes. We have copies of that
2 information.

3 COMMISSIONER MITTEN: That would be helpful.

4 MR. GLASGOW: There is a market study and a
5 feasibility breakdown, a spreadsheet.

6 CHAIRPERSON CROSS REID: Mr. Glasgow, if your
7 witnesses would like to submit written testimony or if there's
8 something that they just feel they'd like to put on the record
9 today, they can do so, but for the most part we would just
10 allow you to just go right through the segments and get to your
11 closing remarks.

12 MR. GLASGOW: Sure. All right. What we can do
13 is, Mr. Bellamy, would you just briefly describe the project
14 and process that you've gone through?

15 MR. BELLAMY: Good afternoon. My name is Brandon
16 Bellamy. I'm the Deputy Director of the St. Paul Community
17 Development Corporation.

18 The short version is that this is a blight on the
19 community. It's an existing 33-unit building which is vacant.

20 Our plan is to demolish it and erect 56 units of
21 brand new, quality, senior housing, independent living. We
22 basically are working very hard to include all of the
23 conveniences that seniors may desire in this building. It's
24 the continuation of a brand that we've already won a lot of
25 awards with.

1 We've tried to make the project as affordable as
2 possible. Unfortunately, due to situations in regard to the
3 site, in order for the project to be feasible, we had to get a
4 certain number of units. There's just a certain amount of
5 fixed cost that we have to carry.

6 Part of it is because we'd like to offer a deeper
7 level of service to our seniors, not to exclude a concierge
8 that we pay for, things that we'd like to include. And in
9 order for us to make that happen, we have to reach a certain
10 level of units in order to make that work.

11 The demand for senior housing in Ward 8 is well
12 documented. Just the admission of these units into that
13 marketplace is an increase of almost 28 percent for the units
14 that are qualified for residents that live there currently, and
15 that's a shame because we should have more quality senior
16 development in Ward 8.

17 That's the short version.

18 CHAIRPERSON CROSS REID: Okay. Well, thank you.

19 If you have a written testimony, then you can
20 submit it.

21 MR. BELLAMY: Just my notes, ma'am.

22 CHAIRPERSON CROSS REID: Oh, that's fine. You
23 did a good job, and as a matter of fact, a lot of what you
24 testified to we do already have in the submission.

25 MR. BELLAMY: Okay.

1 CHAIRPERSON CROSS REID: Okay. Then we can move
2 now, Mr. Glasgow.

3 Office of Planning report? And, Office of
4 Planning, I'd ask if you'd like you could basically stand on
5 the record or you could just --

6 MR. COCHRAN: Well, first, Madame Chair, I'd like
7 to be sure that we have a record that we can stand on, and I'd
8 like your permission to accept the late report into the record.

9 CHAIRPERSON CROSS REID: We'll waive the record
10 to accept your report.

11 MR. COCHRAN: Yes.

12 CHAIRPERSON CROSS REID: Unless there's any
13 objection with any of the Board members.

14 MR. COCHRAN: Okay. Now --

15 CHAIRPERSON CROSS REID: And as an aside, sine
16 you brought it up, can you get in a little earlier than jus the
17 day of? It would be most helpful to us.

18 MR. COCHRAN: We would like to.

19 MR. GLASGOW: Madame Chair, in fairness to the
20 Office of Planning, there was information. They were working
21 with us on this project to make sure that we had --

22 CHAIRPERSON CROSS REID: Ah-ha.

23 MR. GLASGOW: -- the record, and there was
24 information going back and forth and requests and comments as
25 to how to make the best presentation and the best case before

1 the Board, and some --

2 CHAIRPERSON CROSS REID: Okay.

3 MR. GLASGOW: -- of that information didn't
4 arrive to the Office of Planning until after their filing
5 deadline.

6 CHAIRPERSON CROSS REID: Okay. So okay. He
7 threw you a life preserver over there.

8 MR. COCHRAN: Yes. I think Mr. Glasgow, although
9 he obviously read my report better than I did, has a different
10 concept of some information as opposed to something larger than
11 that.

12 In any event, no, I gather that the Board doesn't
13 feel a need for OP to recapitulate our report. We would like
14 to point out two questions. One is we feel that the Applicant
15 has demonstrated the need for the additional height. We are
16 not fully convinced that the Applicant has demonstrated the
17 need for both the additional height and coverage, and I would
18 hope that the Board's questions will begin to address some of
19 that matter about the lot coverage vis-a-vis the port-cochere.

20 Office of Planning feels that it needs to be
21 demonstrated, although we don't feel that it is necessarily a
22 project killer by any stretch of the imagination, but it is a
23 design option that the Board will be able to inquire more
24 about.

25 As to our other question about the site, it's the

1 flip side of the reason that they're here asking for relief,
2 which is the slope. There was some concern that, given that
3 this is a residence for independent seniors, they might not
4 need a wellness center with a 12.5 percent grade because you'd
5 be able to walk up the hill and get your exercise, but my
6 concern on that was allayed by visiting the facility in Prince
7 George's County, where it's even more isolated, and it works
8 very well.

9 There's van service. There are all kinds of
10 services on site. The Office of Planning no longer has a
11 concern about whether this would be an appropriate location for
12 an independent senior facility, and we were very impressed with
13 what we saw in Prince George's County.

14 So that concludes our testimony. Certainly if
15 you have any question.

16 CHAIRPERSON CROSS REID: Questions? Do you have
17 questions?

18 Just one second. We'll have to make a decision
19 about that.

20 MR. GLASGOW: Madame Chair, question?

21 VICE CHAIRPERSON RENSHAW: Madame Chair.

22 CHAIRPERSON CROSS REID: Let us -- I know, Ms.
23 Renshaw. I'll let you leave.

24 VICE CHAIRPERSON RENSHAW: No, but I wanted to
25 say that I think we really do need a little bit more review of

1 the Office of Planning report because we did just get it.

2 CHAIRPERSON CROSS REID: Ms. Renshaw, that's
3 where I was going with that.

4 MR. GLASGOW: Okay. I'm sorry. I misunderstood.
5 I thought --

6 CHAIRPERSON CROSS REID: I just -- no, no. I was
7 just informed that all of the Board members have not completed
8 it. So we're just going to take a few minutes and just make
9 sure that everyone has completed reading it, and then we can
10 ask questions.

11 MR. GLASGOW: Okay.

12 CHAIRPERSON CROSS REID: I didn't know that
13 everyone hadn't finished it.

14 (Whereupon, the foregoing matter went off the
15 record at 1:39 p.m. and went back on the record
16 at 1:43 p.m.)

17 MR. COCHRAN: Madame Chair, I realize that you
18 didn't get the report until today, but I would suggest that you
19 particularly look at Section B(2) on page 6 and the third
20 paragraph on page 7, and then the last of the recommendations,
21 the last bullet on page 8.

22 (Whereupon, the foregoing matter went off the
23 record at 1:44 p.m. and went back on the record
24 at 1:47 p.m.)

25 CHAIRPERSON CROSS REID: Okay. Thank you very

1 much.

2 Now, let's look closer at the Office of Planning
3 report. An issue that was raised by Mr. Cochran in regard to
4 the lot coverage issue.

5 Discussion, questions?

6 MEMBER GRIFFIS: Yes, Madame Chair. I had a
7 quick question regarding that.

8 Mr. Cochran, I read your paragraph. I've also
9 seen that the Applicant is making the case that limiting the
10 lot occupancy would actually compromise the design and
11 security, which seemed to be a fairly strong case, and I will
12 let them present it.

13 But you bring up an issue that I did not see in
14 their application, and that is of potentially flammable
15 materials. Do you want to talk to that specifically or maybe
16 the Applicant can?

17 And then also just quickly on why you don't feel
18 there's a strong case for the port-cochere in terms of
19 increasing the lot occupancy.

20 MR. COCHRAN: The Applicant had not demonstrated
21 to us that alternative designs were considered and that this
22 was the best solution. Absent that, I felt that we really
23 needed to raise the question for the Board to ask.

24 It is a design solution. It's a design option.
25 There are flammable materials, quite understandably cleaning

1 supplies, whatever, solvents that you're not supposed to keep
2 under your kitchen sink, are going to be stored in the port-
3 cochere, and that's admirable. It's separated from the main
4 building. It reduces the risk of fire, et cetera.

5 Some of the HVAC systems, the condensers will be
6 under the roof of the port-cochere. Again, a good design
7 solution.

8 But I do feel or the office feels that with the
9 rules, the Applicant has the burden to demonstrate that there's
10 actually a need as opposed to simply a preference to exceed by
11 4.48 percent.

12 CHAIRPERSON CROSS REID: Did you discuss it with
13 them --

14 MR. COCHRAN: Yes.

15 CHAIRPERSON CROSS REID: -- as far as whether or
16 not there were any alternatives that they could present?

17 MR. COCHRAN: Yes. They were aware that we had
18 asked that question, and as I think the report said, I think we
19 were optimistic that they would be addressing that today.

20 CHAIRPERSON CROSS REID: Okay.

21 MR. COCHRAN: Certainly with respect to security,
22 a fence doesn't count for FAR. They could have put up a
23 security fence. I think given the type of design that this is
24 aesthetically, it makes some sense, the type of revival
25 architecture that they've chosen to emulate.

1 But, again, that's an aesthetic perception as
2 opposed to a demonstration of meeting the test. Clearly, with
3 the slope there would have to be either an exceeding of the
4 story limitation or an exceeding of the lot coverage
5 limitation. The Applicant in a very minor way, I think, has
6 simply failed to demonstrate why they need both, and I think it
7 would be relatively easy for the Applicant to discuss that 4.48
8 percent relief request for the port-cochere, primarily for the
9 port-cochere.

10 There may be some very small percentage that's
11 due to the actual occupied building also.

12 CHAIRPERSON CROSS REID: Okay. Mr. Glasgow, do
13 you wish to respond yourself or do you wish to have one of your
14 witnesses?

15 MR. GLASGOW: Well, I'll take a quick start
16 myself, and then we can get the witnesses up that we need to.

17 If you look at the ground floor plan in your
18 packet of materials, you'll see four little rooms that are on
19 the far side, the southern side of the port-cochere.

20 CHAIRPERSON CROSS REID: Is that a part of -- is
21 that a tab?

22 PARTICIPANT: Go to F.

23 CHAIRPERSON CROSS REID: F?

24 MR. GLASGOW: Yes, it's in F, in the ground floor
25 plan. So I wanted to sort of pick out the different components

1 of what's in the port-cochere.

2 And so we have that separation of materials that
3 would be used with respect to the maintenance of the building
4 to the main building.

5 Oh, it's in E. I'm sorry. Tab E, as in Edward.

6 CHAIRPERSON CROSS REID: Okay. All right.

7 MR. GLASGOW: And that would be the --

8 CHAIRPERSON CROSS REID: I'm sorry. We just got
9 it. So what were you referring to?

10 VICE CHAIRPERSON RENSHAW: What page?

11 MR. GLASGOW: It's the second --

12 MR. GLASGOW: Ground floor, Tab E, ground floor
13 plan. You'll see the four little rooms within the port-
14 cochere, which is where maintenance and other materials would
15 be kept, and that's away from the main building. So we have
16 that element of the port-cochere.

17 The other drawing that I think is constructive
18 there is the sheet that shows the roof plan. This sheet; it's
19 about the seventh or eighth sheet in, and it shows the
20 condenser units for the air conditioners up on the port-
21 cochere, of which there are 12.

22 Either we could put the air conditioners up on
23 the port-cochere and have them in that context behind that
24 screen wall, or we could put them down on the ground. If you
25 put them on the ground, you have to pave an area to hold them,

1 which would be about the size of the area that we have them
2 sitting on, and when they're up in the air, they're not subject
3 to vandalism or anything else. We've got them in a safe,
4 secure location, and so we believe that that is a very positive
5 situation with respect to the site.

6 And because of the slope, we would essentially be
7 digging into our green space probably on the north side of the
8 site to locate the pad that they would sit on, and we do not
9 think that that's positive.

10 CHAIRPERSON CROSS REID: And that would be a pad
11 of approximately what size? The dimension?

12 MR. GLASGOW: What size is that pad? The
13 dimensions?

14 PARTICIPANT: Each pad is about three by three
15 feet.

16 CHAIRPERSON CROSS REID: And you'd need six?

17 PARTICIPANT: Twelve.

18 MR. GLASGOW: And there's 12 of them.

19 CHAIRPERSON CROSS REID: Twelve. Okay.

20 MR. GLASGOW: Then also, if you notice the area
21 that's under the port-cochere is already paved, it's a driveway
22 area, and it's got a sidewalk area. So there's no additional
23 paving of the site. We're covering over a piece of the site,
24 and plus we wanted to give the appearance of the street which
25 it does do with respect to the security of the parking lot.

1 Any time that you can control entrances and exits
2 and have that be very apparent that this is a controlled
3 entrance and exit, that helps with the security of the
4 property.

5 CHAIRPERSON CROSS REID: Okay.

6 MR. GLASGOW: So we think that that is a
7 combination of all of those reasons, plus the design elements.

8 And we understand that with respect to our burden of proof,
9 that we happen to favor one design over another is not the most
10 compelling argument, but we have a number of very practical
11 issues that we're trying to address with respect to this site,
12 with respect to this location that have to deal with the lot,
13 and all of those together have led to this solution as being
14 the best way to address the issue, and therefore, that's why
15 we've asked for that .48 FAR variance.

16 CHAIRPERSON CROSS REID: Okay. Questions?

17 MR. GLASGOW: For lot occupancy, the lot
18 occupancy variance.

19 MEMBER LEVY: Madame Chair, typically this type
20 of structure is used to shelter the entrance to the building.
21 It appears to me that the entrance of the building is actually
22 located in another location other than under --

23 MR. GLASGOW: Under the structure. That is
24 correct, Mr. levy.

25 MEMBER LEVY: Is that correct?

1 MR. GLASGOW: Yes. The entrance to the
2 structure, once again, the main entrance to the building is
3 located in the middle of this L.

4 MEMBER LEVY: Right.

5 MR. GLASGOW: And we thought that it was a good
6 design feature for those that would be coming off the sidewalk
7 and the street to have the covered area. They know they're
8 getting onto their site, and then they walk around the corner
9 to the main entrance.

10 It also helps mark an entrance area that is not
11 visible from the street, but makes it clear where you're going
12 to go to enter the building. It's going to be underneath the
13 port-cochere, is going to lead you to that entrance.

14 MEMBER GRIFFIS: A quick point of clarification.
15 We're talking about the lot coverage, and I imagine we'll get
16 into it further, but is, in fact, the amount of lot coverage
17 variance going forth equal to what is under the port-cochere?

18 MR. GLASGOW: It's off by a couple hundred square
19 feet.

20 MEMBER GRIFFIS: Okay.

21 MR. GLASGOW: And it is within the -- and I've
22 forgotten the section number offhand, but there is the Zoning
23 Administrator in the residential zones has his two percent rule
24 that he can give you for residential projects, and we are well
25 within that.

1 I think if you took off the port-cochere, we are
2 40.8 percent lot occupancy so that we would be within the
3 zoning administrator's two percent discretion to give us that.

4 We looked at that very carefully. We assumed
5 that someone on the Board was going to be asking, "Well, is it
6 a chunk of the building that is leading to this or is it just
7 the port-cochere?"

8 And I can say with the Zoning Administrator's two
9 percent, it is only the port-cochere.

10 CHAIRPERSON CROSS REID: Any further questions?
11 Mr. Levy?

12 MEMBER LEVY: Again, I don't know how significant
13 I feel that it is. It just seems to me that it's perhaps
14 unnecessary additional lot coverage, given that the structure
15 is not really performing the function for which it's normally
16 designed, and pedestrians walking in from the street, in fact,
17 would have to walk in foul weather in order to get to the door
18 ultimately, and that the air conditioning units could possibly
19 be accommodated within the ridge line of the roof of the
20 building and still not be on site.

21 MR. BELLAMY: Is it okay if I just respond to
22 that statement?

23 CHAIRPERSON CROSS REID: Sure.

24 MR. BELLAMY: I think there's three major issues
25 in response to that. One is the building has a state-of-the-

1 art security system. We do have cameras on that port-cochere
2 which allow for digital coverage for the building. That's one
3 important issue.

4 Two, we discussed putting the units on the roof.

5 That calls for a significant cost increase based on how the
6 chases have to run. So we did explore that option.

7 And, thirdly, not to belittle this point because
8 I think it's very important, it is a design feature. In that
9 section of the city, it's our philosophy that community
10 development is more than just nice buildings. If you don't
11 have programming, nice buildings won't do anything for you.
12 But it is very important that in low income populations that
13 they don't feel like that. There's no reason for a building to
14 look that way. I think it's a minor adjustment versus what it
15 brings to the building in this Georgian style of architecture.

16 And I think that's very important. I've often
17 had discussions where folks might say, "Well, why are you
18 adding microwaves to the building?" or "why are you adding this
19 to the building?" or "why are you adding that to the building?"

20 Well, if my grandmother was going to live there,
21 I know she's really appreciate that port-cochere. It adds to
22 the building. It makes it a nice place to live, and that's
23 what we want to do, create nice places to live.

24 MEMBER GRIFFIS: Well, I think in that case also,
25 if I can, if you're looking at the first floor plan, you

1 actually do have access. It may not be the main entrance, but
2 you do have access perhaps to the -- well, you do have a door
3 there going to the lobby.

4 Also, the main purpose room, which looks like
5 obviously the largest room for meetings, if you had whatever it
6 be, cars and such dropping off, it may be a good cover.

7 But I would think more importantly, I think where
8 you're getting to is the design of it. I feel that is a very
9 strong move there. Whether that's perfect, but it's a strong
10 move in terms of holding the street edge of that building. It
11 is an announcement of the entrance. It is an announcement of
12 how you access the facility and enter into it.

13 Also we've talked about security in terms of the
14 design. You can have the specific cameras and gates and all of
15 that, but I think security also through design is a matter of
16 confidence, I might say, and that is the defining entrance and
17 edges, and I think that's what this element is trying to do, if
18 not doing outright.

19 So there it is. I don't know if we need to
20 belabor this much more than that.

21 VICE CHAIRPERSON RENSHAW: Madame Chair, I would
22 benefit from having the architect walk us quickly through the
23 design of this building, and what I would like to hear about is
24 the movement of handicapped persons in and out of the building,
25 making sure that there is an entrance from this port-cochere

1 directly into the building, the short way rather than a longer
2 way for wheelchairs.

3 So perhaps if the architect is here.

4 MEMBER GRIFFIS: Madame, Chair, could I just ask
5 a quick question in terms of relevancy, especially if we're
6 trying to expedite this?

7 VICE CHAIRPERSON RENSHAW: Well, I don't want to
8 rush this. I think that we should have adequate time to hear
9 from the architect.

10 CHAIRPERSON CROSS REID: Well, yes and no.

11 MEMBER GRIFFIS: I definitely want to hear from
12 the architect. I'm just wondering on the relative -- you
13 brought up the point of ADA access and such.

14 CHAIRPERSON CROSS REID: Yeah, that's what I was
15 about to say. I think that the project will have to comply
16 with the ADA regulations, and as such, that's a given, Ms.
17 Renshaw.

18 VICE CHAIRPERSON RENSHAW: I understand that.

19 CHAIRPERSON CROSS REID: And I don't -- so as
20 such, if you don't mind, perhaps you wouldn't have to show us
21 those routes because as long as we know that they are there,
22 then that should be -- I think that should suffice.

23 VICE CHAIRPERSON RENSHAW: I'm sure that the
24 architect would bring this into his discussion. I don't think
25 it needs to be a long discussion, but if we might move ahead

1 with the architect's --

2 CHAIRPERSON CROSS REID: Was there something
3 specifically that you wanted him to --

4 VICE CHAIRPERSON RENSCHAW: Yes, I wanted --

5 CHAIRPERSON CROSS REID: -- point out for you?

6 VICE CHAIRPERSON RENSCHAW: -- the Board to hear
7 from the architect so that we could see the entry into the
8 building. I'm specifically interested also, although it wasn't
9 brought up here, the parking arrangement for the building.
10 Where do the visitors park? Where do the help park? How many
11 cars do you anticipate those residents in the building will
12 have?

13 This was mentioned; a parking lot was mentioned
14 on page 11 of the Applicant's proposal. The Office of Planning
15 touches on it on pages 3 and 5, but no other information. So I
16 would like to hear about that also.

17 CHAIRPERSON CROSS REID: Okay.

18 VICE CHAIRPERSON RENSCHAW: So perhaps with that
19 the architect could --

20 CHAIRPERSON CROSS REID: If you would respond to
21 Board Member Renschaw's question and just give us very briefly
22 the -- your response.

23 MR. KENNETT: Good afternoon. My name is Bruce
24 Kennett.

25 CHAIRPERSON CROSS REID: Please speak into the

1 mic. Give you name and address, and do you have a light pen?

2 MR. KENNETT: No, I don't.

3 CHAIRPERSON CROSS REID: Okay. Then probably you
4 would have to bring the easel a little closer.

5 MR. KENNETT: Can I carry this with me?

6 CHAIRPERSON CROSS REID: Well, it won't go but so
7 far, and so I think that bringing the easel a little closer,
8 too, would be helpful. Okay. Closer, closer. Okay.

9 MR. KENNETT: My name is Bruce Kennett. I'm with
10 Torti Galles CHK and partners. We're in Silver Spring,
11 Maryland.

12 You want the address? 1300 Spring Street, Suite
13 500, Silver Spring, Maryland.

14 CHAIRPERSON CROSS REID: Okay.

15 MR. KENNETT: Okay. The plan concept of this
16 building is reminiscent of a French hotel I've been told by
17 people more traveled than I. What it attempts to do is create
18 a strong urban edge along the front facade, a strong street
19 edge, and the port-cochere that's been in question here acts as
20 a visual screen for the parking, which is relegated to an
21 interior courtyard.

22 The pedestrian entrance off of the sidewalk is
23 through here underneath the port-cochere. There are doors that
24 go into the community space and into the hallway that goes back
25 to the lobby.

1 This is the parking area, and I would like Mr.
2 Jay Spiegel with our civil engineer to address the parking
3 issues, but this is the parking for the facility with the turn-
4 around.

5 This is the main entrance from the parking. It's
6 a covered octagonal shaped turret. So when you're dropped off
7 here, you're under a protected roof. You go through an
8 entrance lobby, and, by the way, all of the entrances are
9 handicapped accessible. All of the door, the door approaches
10 of all the public spaces, as well as the entry doors to the
11 units, are handicap accessible in accordance with ANSI. And
12 100 percent of the units are in accordance with the Fair
13 Housing Act by code.

14 There's an elevator located right here, which is
15 accessible, and it's capable of taking a stretcher in addition
16 to wheelchairs.

17 We have a leasing center in this area.

18 This is the large community room with a warming
19 kitchen. We have an arts and crafts room, some public bathroom
20 facilities, handicap accessible; a visiting physician suite
21 with a nurse's office and waiting room; a large exercise room
22 with spa.

23 There are 56 units in the building, seven two-
24 bedroom and 49 one-bedroom.

25 And on the upper levels, which are also all

1 handicap accessible, we have tenant storage in the center and a
2 gathering spot down here, a little lounge with a bay window off
3 the rear where there will be seating for the residents.

4 Are there any other questions you would like me
5 to address?

6 VICE CHAIRPERSON RENSHAW: No. Thank you.

7 CHAIRPERSON CROSS REID: All right. Thank you
8 very much.

9 MR. KENNETT: Jay. I'd like to introduce Mr.
10 Spiegel who's going to talk about the parking for us.

11 MR. SPIEGEL: Good afternoon, Madame Chair. For
12 the record, my name is Jay Spiegel. I signed up as John
13 Spiegel. I'm with Greem and Peterson. Our offices are located
14 in Laurel, Maryland.

15 As Mr. Kennett had mentioned, this is the parking
16 field. The parking rate utilized for the application was one
17 space per six units. That would have given a net result of
18 approximately ten spaces. We are providing 13 standard spaces
19 in this location and along this location.

20 The handicapped space, van accessible space is
21 located in this location with the access point here, and then
22 leading to the building.

23 VICE CHAIRPERSON RENSHAW: Thank you.

24 Where do the residents sit outside? Is there an
25 open courtyard? Because you refer to the parking area as the

1 courtyard, and I thought a courtyard was more for the pleasure
2 of the residents for sitting outside.

3 MR. McNEAR: Good evening. Good afternoon,
4 rather. I'm Charles McNear with St. Paul CDC.

5 With regards to an outside seating area, we will
6 have a water feature, a fountain in the middle circle of the
7 drive, and we plan on providing some outside seating in that
8 particular area.

9 We also have an opportunity to introduce seating
10 at the main entrance on either side of the doorway, and under
11 consideration is the development of an outside gardening area,
12 which will be up in the upper right-hand corner, that would be
13 available to the residents to use.

14 VICE CHAIRPERSON RENSHAW: Is the strip along the
15 slide of the building which is pictured in green, is that -- at
16 the top, right around the left. There you go.

17 Down from there, is that strip large enough for
18 some outside seating?

19 MR. McNEAR: Here?

20 VICE CHAIRPERSON RENSHAW: Yeah.

21 MR. SPIEGEL: No, ma'am. This is an area where
22 we put plant material that will discourage any people from
23 cutting through this area. It will not be a sitting area.

24 As Charles mentioned, the sitting areas most
25 likely would be these areas and a garden area located in this

1 location.

2 Another advantage of the locations here, these
3 will be predominantly in the shade in the afternoon.

4 VICE CHAIRPERSON RENSHAW: And that can
5 accommodate how many people?

6 MR. SPIEGEL: Depending on the amount of benches
7 placed there. That I don't think has been determined yet.

8 VICE CHAIRPERSON RENSHAW: Okay. Thank you.

9 CHAIRPERSON CROSS REID: All right. Cross
10 examination of the Office of Planning. Mr. Glasgow?

11 Okay. Thank you very much.

12 Any other government reports? I know it has been
13 referred to several other government entities.

14 So now we move to ANC. Is the ANC representative
15 here? Please come forward.

16 Okay. Thank you.

17 MS. CUTHBERT: Good afternoon, Madame Chair and
18 members of the Board. I'm Mary Cuthbert. I am the Chair for
19 Advisory Neighborhood Commission 8C.

20 MR. LOCKBRIDGE: I'm R. Calvin Lockbridge, Vice
21 Chairman of Ward 8C.

22 MS. KEMP: Good afternoon. I'm Barbara Kemp,
23 Commissioner of 8C-05. I'm the Secretary.

24 MS. CAMPBELL: Good afternoon. My name is
25 Alethea --

1 CHAIRPERSON CROSS REID: Turn your mic on,
2 please, ma'am.

3 MS. CAMPBELL: Good afternoon. My name is
4 Alethea Campbell. I am not an ANC Commissioner. I'm a member
5 of the D.C. Commission on Aging.

6 CHAIRPERSON CROSS REID: Okay. This is just for
7 the ANC report, but are you having her as a witness for your
8 report?

9 MS. CUTHBERT: Right.

10 CHAIRPERSON CROSS REID: Okay. Now, are you
11 giving the report for the ANC?

12 MS. CUTHBERT: Yes, I am.

13 CHAIRPERSON CROSS REID: All right, and you have
14 -- as I ma understanding it, you have witnesses that you want
15 to speak as well?

16 MS. CUTHBERT: Only one witness.

17 CHAIRPERSON CROSS REID: Okay.

18 MS. CUTHBERT: The mini Commission on Aging from
19 Ward 8.

20 CHAIRPERSON CROSS REID: All right. Thank you.

21 MS. CUTHBERT: Okay. I'm just going to go an
22 overview rather than read my statement.

23 Advisory Neighborhood Commission 8C met on June
24 6th of year 2000. At that meeting we recommended that a group
25 of citizens go see the facility in Maryland. About 17 seniors

1 signed up, and they went to visit the site on the 21st of June.

2 By the ANC going on summer recess and we knew the
3 hearing was coming up July, at that meeting we voted to have a
4 meeting to vote on this project on June 27th, and we held the
5 meeting after the seniors visited the site in Maryland to see
6 if it would be conducive for our community.

7 At our meeting on the 27th, well, the seniors
8 returned, and it was from our community, gave us the result,
9 which a couple of ANC Commissioners went afterward. Myself and
10 Commissioner Lucas then went to see the facility after work
11 hours because both of us work during the day.

12 And we came to the conclusion from the observance
13 of the community and with the variance, that we felt that this
14 would be beneficial to our community as we are maturing very
15 quickly, and that location, they felt that that facility was
16 unique. It wasn't the traditional senior citizen facilities
17 that we do have in Ward 8, with the straight, direct, long,
18 dark hallways. It had some unique points to it that we really
19 wished that we could have in Ward 8.

20 Like Commissioner Renshaw asked about a seating
21 area. Well, unfortunately, that's not conducive for our area
22 right now at this time, but the building structure, the
23 apartment size which I was very concerned about, being a young
24 senior, and the doors to each room was extremely wide in case
25 you become handicapped with a wheelchair.

1 So we were very pleased with the facility, and
2 when we looked at the zoning issue, we felt that it wouldn't
3 distract the architecture of our community.

4 CHAIRPERSON CROSS REID: Okay, and did you have a
5 vote taken?

6 MS. CUTHBERT: We had a vote. We had a quorum.
7 A quorum in Advisory Commission Neighborhood 8C is four
8 Commissioners, and that is stated on the front page of our
9 report, what Commissioners were at that meeting.

10 CHAIRPERSON CROSS REID: Your report, the July
11 9th letter?

12 VICE CHAIRPERSON RENSHAW: Your June 2nd letter?

13 MS. CUTHBERT: Oh, that was the wrong date. I'm
14 sorry. It was supposed to be -- it should have been July.

15 VICE CHAIRPERSON RENSHAW: July. July 2nd?

16 MS. CUTHBERT: Yes. No, it wasn't -- it should
17 have been July, not June, because our meeting -- our vote took
18 place, if you read the letter; our vote took place June 27th.

19 So that's where the error came out on the top part.

20 CHAIRPERSON CROSS REID: Oh, okay.

21 MS. CUTHBERT: Our vote took place on the 27th.

22 VICE CHAIRPERSON RENSHAW: Thank you for
23 clarifying that.

24 CHAIRPERSON CROSS REID: Okay. Thank you very
25 much.

1 And you had someone else that you wanted to
2 speak?

3 MS. CAMPBELL: As I said, I'm Alethea Campbell, a
4 member of the Ward 8 Mini Commission.

5 I understand that you do have a copy of the
6 letter on file already. So I don't really need to read it, but
7 I do want to say that I was one of those seniors, around 17 of
8 us, that took the trip out to see the St. Paul's building.

9 We were surrounded by beauty. That's all you
10 could hear, "oh, ah," as we entered because we expected a drab,
11 colorless kind of thing that we are accustomed to seeing and
12 especially in Ward 8.

13 The Ward 8 Mini Commission fully supports this
14 and we welcome it to the community.

15 I would like to add though, and it's not on the
16 letter, that in regards to the transportation, this site is
17 unique because even though it is on a slope, there's
18 transportation from each end. If I was going to live there,
19 and one day maybe I will if I'm fortunate, I would go down the
20 hill when I'm leaving on one bus line, and I would come back on
21 another bus line. I'd still be going down the hill, which
22 makes it quite unique.

23 (Laughter.)

24 VICE CHAIRPERSON RENSHAW: You have this all
25 worked out.

1 CHAIRPERSON CROSS REID: Thank you very much.

2 Ms. Glasgow, any cross examination?

3 MR. GLASGOW: No, no cross examination.

4 CHAIRPERSON CROSS REID: All right. Thank you.

5 Now we go to person in support of the
6 application.

7 (No response.)

8 CHAIRPERSON CROSS REID: persons in opposition to
9 the application? Sorry?

10 MS. MAJOR: I would like to testify. I'm not in
11 favor of or opposed to.

12 CHAIRPERSON CROSS REID: All right. Come on.
13 Okay.

14 MS. MAJOR: Good afternoon. My name is Virginia
15 Major. I'm the Commissioner for the single member District 8C-
16 07. 114-124 Wayne place is within my single member district.

17 Thus, I'm here today to provide information on
18 concerns expressed by residents that live in 8C-07.

19 On May 24th, 2001, a single member district
20 meeting was held after residents in the senior member district
21 were notified by a flyer which included information on this
22 project. A special effort was made to provide notices to
23 apartment owners and residents on Wayne Place and on First
24 Street, S.E.

25 The project representative was invited, as well

1 as other Commissioners. A project representative, however, was
2 not able to attend.

3 The meeting was held at the Oxon Run Manor on
4 Wayne Place and Mississippi Avenue, S.E. Twenty-two residents
5 were in attendance. While no vote was taken in favor of or in
6 opposition to this project, the following is presented for
7 consideration by the Board of Zoning Adjustment.

8 First, I'd like to mention that the D.C.
9 Department of Housing and Community Development provided pre-
10 development funds for acquisition and demolition of the
11 property, and to construct residential units to offer as rental
12 housing for low and moderate income elderly persons who are
13 capable of independent living.

14 Second, my understanding is that funding is being
15 requested from the Housing Finance Agency to construct
16 residential units for low income residents. Since tax dollars
17 will be used in constructing this facility, I feel very effort
18 should be made to insure that it serves present and future
19 needs to the community and is following the current trend in
20 building tax subsidized facilities. The training in our
21 community, I believe, is to replace low income housing with
22 mixed use property.

23 And I might mention there are senior complexes
24 also included in these mixed use properties for residents.
25 Many of the low income housing have been torn down, and they're

1 being replaced with mixed use properties, which includes
2 housing for seniors.

3 Now, the concerns expressed by residents were as
4 follows: low income housing. Building units strictly limited
5 to low income seniors would probably provide an isolated
6 community due to the topography of the street, the surrounding
7 properties, the current activities in the surrounding area, and
8 the needs of many low income seniors.

9 Public transportation would not be readily
10 available without walking up Wayne Place and over to Martin
11 Luther King Avenue or down Wayne Place to Mississippi Avenue.

12 There are few, if any, amenities in the nearby
13 neighborhood.

14 Topography and possible effects. The project is
15 located at the top of a hill with elevation of about 140 to 160
16 feet, and that's above mean sea level. I didn't put that in.

17 Some of the buildings on both sides of the street
18 have problems with cracks in the foundation and along outside
19 walls. The building on the lowest part of the subject property
20 has cracks in the foundation in as high as the third floor
21 outside wall.

22 While topography may not be the reason for these
23 cracks, we know that Southeast has many buildings with problems
24 due to the way they were placed on hilly areas.

25 Surrounding buildings. All buildings on Wayne

1 Place are apartment buildings owned by various owners.

2 CHAIRPERSON CROSS REID: Okay. Now, Ms. Major.

3 MS. MAJOR: Yes.

4 CHAIRPERSON CROSS REID: We have -- not that we
5 don't appreciate your testimony, but what we have to be
6 concerned about with at this particular hearing is the subject
7 property before us. So make your comments in your testimony
8 germane to this specific property itself.

9 I read ahead.

10 MS. MAJOR: Okay. That's fine.

11 CHAIRPERSON CROSS REID: In this particular
12 paragraph, I think that you kind of get a little bit off mark
13 with it in going into other buildings and also in discussion --
14 discussing the community.

15 And it is true. These things are not within our
16 purview. So if you could pick back up in your last paragraph,
17 I think that would be more appropriate.

18 MS. MAJOR: Okay. I will do that.

19 CHAIRPERSON CROSS REID: Thank you.

20 MS. MAJOR: But my thought was you were
21 responsible for reviewing all buildings that were not single
22 family units, and as to the --

23 CHAIRPERSON CROSS REID: No.

24 MS. MAJOR: That's not within the purview of the
25 -- okay.

1 CHAIRPERSON CROSS REID: Only the buildings that
2 come before this Board are the ones that we have any kind of
3 authority to have any decision making capacity. That is not
4 within our authority.

5 MS. MAJOR: So residential facilities -- and I
6 just want to ask to clarify my own, maybe my misunderstanding -
7 - any buildings that are non-single family buildings would not
8 come before the zoning. Is that the Board of Zoning or the
9 BZA?

10 CHAIRPERSON CROSS REID: Well, I'm not sure. The
11 question that you're referring to -- what is your question?

12 MS. MAJOR: The question is apartment buildings.

13 CHAIRPERSON CROSS REID: Yeah, but what about
14 them?

15 MS. MAJOR: Apartment buildings that are being
16 built. Do you routine review that?

17 CHAIRPERSON CROSS REID: No. That would be DCRA.
18 You mean for building permits?

19 MS. MAJOR: No.

20 CHAIRPERSON CROSS REID: Things of that nature?

21 MS. MAJOR: No, simply whether or not multi-
22 family units can be built. I thought some board, and I thought
23 it was this Board, would review those buildings, whether or not
24 they should be built.

25 CHAIRPERSON CROSS REID: No, no. Let's get

1 clear. If there is a case specifically regarding a building or
2 a site that is brought before this Board, yes, but not --

3 MS. MAJOR: For a variance, I think, or --

4 CHAIRPERSON CROSS REID: For a variance or
5 special exception, yes, definitely, but not generally. We
6 don't review multi-family or single family properties in
7 general.

8 MR. COCHRAN: Madame Chair.

9 CHAIRPERSON CROSS REID: Only if they pertain to
10 whether there is a special exception or variance.

11 Yes?

12 MR. COCHRAN: Could I suggest that perhaps Ms.
13 Major is very familiar with her part of town, where there is a
14 considerable amount of R-5-A zoning, where review is required
15 for structures that are not single family unattached or semi-
16 detached houses. Multi-family review is required as a special
17 exception in an R-5-A zone. So that may be what she's alluding
18 to.

19 CHAIRPERSON CROSS REID: Oh, okay.

20 MS. MAJOR: That's what I am asking, I thought,
21 but to clarify --

22 CHAIRPERSON CROSS REID: Okay. Maybe I didn't
23 understand your question. You're asking if there is a special
24 exception involved does it come before this Board?

25 MS. MAJOR: Some board. I thought it was, and I

1 may be misinformed.

2 CHAIRPERSON CROSS REID: If, in fact, the point I
3 was making, that if there is a special exception or variance
4 involved, they would come to this Board to ask for relief for
5 that particular property only. If, in fact, there's any change
6 made in the zoning other than if it's a -- not a change made,
7 but if there is some exception or there is some difference or
8 something -- someone wants to do something that differs from
9 what the current zoning regulations specify. Then they would
10 come before this Board for that particular property.

11 MS. MAJOR: I thought that applied to multi-
12 family units in our area.

13 CHAIRPERSON CROSS REID: If they want to do
14 something that is a departure from what the zoning regulations
15 will allow, then, yes, it would come before this Board, if
16 there is something that is a departure from what the zoning
17 regulations would allow.

18 MS. BAILEY: Madame Chair, I think the confusion
19 is in most projects in the R-5-A district some type of design
20 review is involved, and so it would come before the Board if
21 it's not a single family or a townhouse type of building. But
22 most multi-family apartments in the Southeast area, the new
23 ones, more than likely they would be at some point coming
24 before the Board for review because there would be design
25 issues involved.

1 Does that help you at all?

2 MS. MAJOR: Yes and no. I'm assuming then, you
3 know, that the review would include the buildings surrounding,
4 whether or not -- but anyway --

5 CHAIRPERSON CROSS REID: No, wait, wait, wait,
6 wait. When you say "review," maybe I -- Ms. Sansone, can you
7 weigh in on this, please? Because I think that there is some
8 confusion. I think there's further confusion with what Ms.
9 Bailey said.

10 MS. MAJOR: Yes, it is.

11 CHAIRPERSON CROSS REID: And we need to get it
12 clarified. Do you understand the question, and can you assist
13 with the response? Because I'm not familiar with the review
14 process before this Board.

15 MS. SANSONE: Madame Chair, I think you were on
16 the right track when you were saying that the Board would only
17 review the specific building or project that's in front of the
18 Board at any given time. So in this case, you're only
19 reviewing the specific proposal here for the St. Paul --

20 CHAIRPERSON CROSS REID: If there is a request
21 for some type of -- something that would be a departure from
22 the existing zoning regulations?

23 MS. SANSONE: Yes. However, as Ms. Bailey was
24 trying to allude to and as was involved in this case, a special
25 exception is required for this multi-family dwelling, but the

1 case only concerns this particular building, not other
2 buildings that might ultimately be constructed in the area.

3 I don't know if that is --

4 MS. MAJOR: I'm only talking about this building
5 as it relates to what's already there, but nevertheless, I'm
6 still not clear on this, and I think I'll seek further
7 clarification on whether we're talking about reviewing. I'm
8 talking about this building, and I would think that review
9 would relate to how many other multi-family units would be in
10 the area, would be a part of whether or not this --

11 CHAIRPERSON CROSS REID: It would depend on what
12 the zoning is.

13 MR. COCHRAN: Madame Chair, again, when the
14 regulations were developed, as I understand it, for the R-5-A
15 zone, there was considerable vacant land east of the Anacostia
16 River. There was some concern that with the numbers of multi-
17 family housing units proposed, there might not be the
18 infrastructure, be that the usual utilities, sewer lines, et
19 cetera, or the public infrastructure, such as school system, et
20 cetera.

21 So this zoning was put into place to insure that
22 the area did not become overly dense and could not support both
23 the physical and the social needs of the new residents.

24 To that extent, Ms. Major, I believe, is correct
25 in saying that the building is reviewed within the context of

1 the larger area and whether a building would overly burden the
2 school system, the streets, parks, and other services or the
3 general site and the environment.

4 Given that Anacostia is now built out, this is,
5 in the view of Office of Planning, somewhat of an anachronistic
6 regulation. Nevertheless, it remains within the regulations.
7 So we review it for special exceptions, knowing that the water,
8 the sewer capacity is there and will likely remain fixed,
9 knowing that as the population decreases, we will have to some
10 extent excess capacity in the school system, a situation which
11 did not exist in the late 1950s, et cetera, et cetera.

12 So within that context, it does get reviewed, but
13 I'm hard pressed to think of a recent review for a special
14 exception in an R-5-A zone where we have found that the social
15 and physical infrastructure would be overly burdened by the
16 construction of multi-family housing in an R-5-A zone.

17 CHAIRPERSON CROSS REID: I see. I understand
18 now. I think, Ms. Major, what you were saying and also that
19 was further explained by Mr. Cochran, is that your
20 understanding was because of these issues that multi-family
21 houses that would be coming on line or any type of new
22 construction or any changes would have to come to this Board to
23 be reviewed to see whether or not, and I guess it would go to
24 adverse impact, whether it be infrastructure, what have you,
25 what kind of effect it would have on that community. Is that

1 what you're saying?

2 MS. MAJOR: Well, I'm really not asking this
3 Board to make a decision on that. What I'm saying is this
4 entire area -- and I'm in my last statement in the paragraph
5 preceding the last one, which states that the area would
6 benefit for a comprehensive review of the use of the land, the
7 type of buildings, and the need of the community.

8 As I say, this may not be in the purview of the
9 Office of Zoning Adjustment.

10 CHAIRPERSON CROSS REID: Right.

11 MS. MAJOR: However, it is within the purview of
12 the Office of Planning, and I'm suggesting that perhaps prior
13 to the start of construction that the Office of Planning, along
14 with the city funding sources for this project, would review
15 the entire area and perhaps consider the needs of the community
16 and the use of the land.

17 I'm not opposed to this project. We are
18 certainly looking forward to a lot of changes, but we would
19 like to see more changes on Wayne Place so that this project
20 will not suffer because of what's already around it.

21 That's my point, and maybe I'm not making it
22 clear.

23 CHAIRPERSON CROSS REID: Okay. So basically
24 you're using this as a forum to be able to request this
25 comprehensive review from the Office of Planning?

1 MS. MAJOR: Well, the Office of Planning is here.

2 So I mean --

3 CHAIRPERSON CROSS REID: Yeah, yeah. That's what
4 I'm saying.

5 MS. MAJOR: But you're right.

6 CHAIRPERSON CROSS REID: And I think that the
7 Office of Planning and their participation in this case was
8 charged with a review of this particular site as it pertained
9 to the whole area and the comprehensive plan, you know, et
10 cetera, et cetera, et cetera. I think this is what they did.

11 Is that not correct?

12 MR. COCHRAN: That's correct, Madame Chair.

13 MS. MAJOR: But not for change.

14 CHAIRPERSON CROSS REID: That's a whole other
15 issue.

16 MS. MAJOR: Okay.

17 CHAIRPERSON CROSS REID: That you may perhaps
18 want to take up with them as to what would be the best route to
19 take as far as implementing changes, but as far as this
20 particular site is concerned and the review process, to make
21 recommendations to this Board as to the effect impact and the
22 analysis as to the overall effect it will have if, in fact, a
23 special exception would be -- the relief would be granted is
24 what they were charged to do, and they have already done that.

25 MS. MAJOR: Well, I appreciate that, and my

1 concern is that I wanted to make it a part of the record
2 because there are city tax dollars being used in this project,
3 and hopefully they, too, will be reading the record of this
4 hearing.

5 CHAIRPERSON CROSS REID: Thank you.

6 MS. MAJOR: So that, you know, one or some of us
7 in the community are really concerned about the overall effect
8 so that this project is not affected adversely because of
9 what's already there.

10 CHAIRPERSON CROSS REID: Okay.

11 MS. MAJOR: In considering the various requests,
12 however, I do hope that if the height, stories variance is
13 approved, that you will be sure that it is adequately placed
14 back from the street, and I'm not sure what that amount of
15 space should be, if there is any that's required, but anyway, I
16 hope that it's considered.

17 And also, the fact that the topography of Wayne
18 Place and the fact that many hilly areas in Southeast have soil
19 problems will be factors into the decision about lot occupancy
20 and the other variances requested.

21 Thank you very much for your patience, and that's
22 basically what I wanted to share with the Board in terms of my
23 perspective, as well as the members of the residents of HCL-7,
24 but we did have a meeting, as I said, with 22 people present.

25 CHAIRPERSON CROSS REID: Okay. Thank you. Thank

1 you very much.

2 VICE CHAIRPERSON RENSHAW: Yes, I want to say to
3 Ms. Major thank you very much for a very thoughtful paper.

4 I take it that in your last paragraph where you
5 address the fact that you hope the building will be placed an
6 adequate distance from the street, that is from Wayne Place?

7 MS. MAJOR: Wayne Place.

8 VICE CHAIRPERSON RENSHAW: And you feel and your
9 single member district members feel that that is as depicted
10 too close to the street?

11 MS. MAJOR: Well, you know, we're not able to
12 judge whether that is too close or not, and we're leaving it up
13 to the experts, but we know that a building that is very high
14 that overshadows the street -- and I think Wayne Place suffers
15 with some of those buildings now where you walk out of the
16 building and you have these three story buildings right at the
17 street.

18 I'm not sure if that's a problem or not, but I
19 would think if you put it on both sides of the street and it's
20 not that way on this side where this project is because they
21 have courtyards, then you know I'm not sure what the appearance
22 would be, and of course, I can't judge it until I see it.
23 Unfortunately the paper doesn't help me, but I hope that you
24 can.

25 CHAIRPERSON CROSS REID: Well, it has to be in

1 compliance with the regulations with regard to setbacks, lot
2 occupancy, side yard and the like, whatever, they're not
3 requesting a variance from. So it would be -- have to be in
4 compliance, and that is what the regulations are for, to make
5 sure that those type of concerns are addressed.

6 MS. MAJOR: But if you ask for a height above,
7 outside of the regulations or a story outside of the
8 regulation, does that space from the --

9 CHAIRPERSON CROSS REID: Yeah, that's departure,
10 and that's one of the variances, and you will remember when the
11 case was -- when the Applicant was making his case, explaining
12 that because the topography, that they asked a variance from
13 the stories because of the fact that they wanted to keep the
14 height consistent.

15 If you looked, I don't think you could see here
16 how it slopes down and on the back, but there was another story
17 added, and there was a variance requested for that.

18 MS. MAJOR: I understand that, but when you give
19 a variance, are you also asked to do something with moving it
20 back from the street? I'm just asking that question?

21 CHAIRPERSON CROSS REID: It has to be consistent
22 with all the other regulations as well, and one of which is
23 setback. If there's not a variance requested, then all the
24 other regulations would be applicable.

25 MS. MAJOR: I'm sorry. If there's not a

1 variance?

2 CHAIRPERSON CROSS REID: If they're not asking a
3 variance from a specific regulations or section of the
4 regulation, then they have to comply with all of the other
5 aspects of the regulations that pertain to that case.

6 MEMBER LEVY: Madame Chair.

7 CHAIRPERSON CROSS REID: So everything else,
8 everything else would be applicable. All the other regulations
9 would apply.

10 MEMBER LEVY: Given that Ms. Major has raised the
11 question, and the OP report, I believe, states that the
12 building height does not require a variance, would it be
13 appropriate just to have a quick explanation of how the
14 building height was calculated and --

15 CHAIRPERSON CROSS REID: Sure. Sure, if you
16 like.

17 MEMBER LEVY: And maybe Office of Planning can
18 confirm that it does not require a variance in this case.

19 MR. COCHRAN: It does not require a variance.

20 I would hope that the Board would ask that
21 question of the Applicant on the calculation of the height.

22 CHAIRPERSON CROSS REID: All right.

23 MEMBER LEVY: And that was my intention.

24 CHAIRPERSON CROSS REID: Okay. Would the
25 architect like to speak to that?

1 Well, you might -- can you see this board? Could
2 you put that one back and then bring that one forward so that
3 it's not --

4 VICE CHAIRPERSON RENSHAW: Oops, there it goes.

5 MR. SPIEGEL: For the record, Jay Spiegel.

6 The height was calculated at a midpoint at the
7 front of the building facade 40 feet to a point measured from
8 the inside ceiling height, as stated in the code.

9 MEMBER GRIFFIS: For clarification on your
10 elevations, actually I'm not looking at them right now, but
11 dimensioned right off of the site below the port-cochere, it
12 actually would be about 42 feet. So common sense would tell
13 you you're coming up the slope to the middle of that front
14 elevation probably more than two feet, and so you'd be below 40
15 feet to the ceiling height on the interior, correct?

16 MR. SPIEGEL: We made absolutely sure that we
17 wouldn't be in violation at the midpoint.

18 CHAIRPERSON CROSS REID: Ms. Major, did you
19 follow that?

20 MS. MAJOR: Yes. So what you're saying then is
21 that you can certainly put it right up on the street without
22 any --

23 CHAIRPERSON CROSS REID: The height is okay.

24 MS. MAJOR: Is that what I'm hearing?

25 MEMBER GRIFFIS: No, i think we just established

1 the height of the building is in compliance.

2 MR. SPIEGEL: I can discuss the front BRL if you

3 --

4 CHAIRPERSON CROSS REID: Discuss what?

5 MR. SPIEGEL: The front building restriction
6 line.

7 CHAIRPERSON CROSS REID: Would you like him to
8 explain to you how that was done?

9 MS. MAJOR: No, that's not necessarily. I just
10 wanted to raise the issue. If you're satisfied with that, I
11 certainly will be, too.

12 CHAIRPERSON CROSS REID: Okay.

13 MS. MAJOR: Thank you.

14 CHAIRPERSON CROSS REID: Thank you.

15 No cross examination? All right.

16 Then we move to closing remarks.

17 MR. GLASGOW: Madame Chair, members of the Board,
18 just so that you're aware, the building is set back about ten
19 feet from the front property line. There is a setback there
20 that's reflected on the plans.

21 With respect to the case-in-chief, we are very
22 pleased to have worked this through with the community, with no
23 opposition within the community, with only support, ANC, City
24 Council member, DHCD, DCHFA, and the Office of Planning.

25 We believe that we have met the burden of proof

1 on each one of the variances that have been requested, that
2 they are needed for this project. They do contribute to this
3 project, and this project will be a benefit to the community in
4 which it is to be located, and we think we've had very
5 substantial evidence and support in testimony on that.

6 We are excited to move forward. We do have some
7 time constraints in proceeding, and we would like to, since
8 there is no opposition to the case and only support, we would
9 like to get a bench decision today if that were the desire of
10 the Board.

11 And we think that the record is clear that the
12 relief is warranted and should be granted.

13 Thank you.

14 CHAIRPERSON CROSS REID: Board members?

15 MEMBER GRIFFIS: A clarification question, Madame
16 Chair.

17 In your opening statement, you indicated that the
18 FAR changed, and I didn't write it exactly down the amount of
19 variance that you were going for in terms of the FAR.

20 MR. GLASGOW: The FAR now is going to be
21 approximately 1.45. So that the variance would be .55.

22 MEMBER GRIFFIS: Point, five, five. Okay.

23 CHAIRPERSON CROSS REID: Okay. Discussion?
24 Motion?

25 COMMISSIONER MITTEN: Madame Chair, I would move

1 approval of Application No. 16729. I think the Applicant has
2 met their burden of proof regarding the special exception for
3 an apartment complex under Subsection 353.1, and I believe that
4 the issue of the topography of the site establishes the basis
5 for the variance, and that the need to have the building of a
6 sufficient size is critical to the feasibility of the project,
7 as the Applicant's submissions have proven, and that that
8 would, in my mind, extend to the lot occupancy requirement, as
9 well, because that's an integral part of the character of the
10 project and, I think, will contribute to its success.

11 CHAIRPERSON CROSS REID: Okay. Second?

12 MEMBER LEVY: I second.

13 CHAIRPERSON CROSS REID: All right. Any further
14 comments? Discussion?

15 VICE CHAIRPERSON RENSHAW: I'd like to refer back
16 to page 8 of the OP report where OP recommended, the last
17 bullet on that page. "Recommending the Board approve the
18 variance request for additional lot coverage contingent on the
19 Applicant's providing additional information demonstrating the
20 need for the requested increase in lot coverage."

21 Ms. Mitten, are you not going to insert that
22 contingent clause?

23 COMMISSIONER MITTEN: Well, I believe they did
24 orally provide the additional information. I don't think
25 there's an additional written submission required.

1 VICE CHAIRPERSON RENSHAW: You do not?

2 COMMISSIONER MITTEN: No, I don't think so.

3 MR. COCHRAN: Madame Chair.

4 CHAIRPERSON CROSS REID: I concur.

5 Yes?

6 MR. COCHRAN: It was not our intention to suggest
7 that the proof needed to be in writing. We thought today would
8 be an opportunity for that.

9 CHAIRPERSON CROSS REID: Okay. Then I think also
10 that I concur with my colleagues that the Applicant has met its
11 burden of proof, and that there is no opposition. There does
12 not appear to be any adverse impact in regard to noise,
13 traffic, parking, light, and the like, and that it does not
14 tend to impair the intent or integrity of the zoning regulation
15 and map.

16 I think that it's a very worthwhile project, and
17 I do commend the Applicant for commencing to erect a project of
18 this nature for the senior citizens in that particular
19 neighborhood, which I know is a very difficult neighborhood.

20 So it certainly will contribute to the
21 elimination of some of the blight and some of the negative
22 aspects of it. So I do commend you for this project.

23 All in favor?

24 (Chorus of ayes.)

25 MS. BAILEY: Staff will record the vote as five

1 to zero to approve Application No. 16729, motion made by Ms.
2 Mitten, seconded by Mr. Griffis, Mr. Levy, Ms. Renshaw and Ms.
3 Reid in agreement.

4 MEMBER GRIFFIS: A quick clarification. I
5 believe Mr. Levy seconded.

6 CHAIRPERSON CROSS REID: We will take up the next
7 application.

8 MS. BAILEY: Application 16696 of Craig and Ann
9 Goodman, pursuant to 11 DCMR 3103.2, for a variance under
10 Subsection 2500.4 to allow a second story addition to an
11 accessory garage for a maid's quarters and mother-in-law suite
12 in the R-3 District at premises 3254 O Street, N.W. The
13 property is located in Square 1230 on Lot 809.

14 All those wishing to testify, would you please
15 stand? All those persons wishing to testify, please raise your
16 right hand.

17 (Whereupon, the witnesses were duly sworn.)

18 MS. BAILEY: Thank you.

19 Madame Chair, there is a request for party status
20 in this case. There are six persons who are requesting party
21 status, and they're represented by Ms. Cynthia Jorando of
22 Arnold & Porter.

23 That's a preliminary matter that the Board may
24 want to take up before beginning the case.

25 CHAIRPERSON CROSS REID: Okay. Thank you very

1 much.

2 Is Ms. Jordano here?

3 MR. GROSS: Madame Chairperson, I'm Nate Gross of
4 Arnold & Porter. I'm representing the opponents.

5 CHAIRPERSON CROSS REID: Okay. All right. Then
6 you're requesting party status?

7 MR. GROSS: Party status.

8 CHAIRPERSON CROSS REID: Okay. Just give us the
9 who you're representing and why you feel that your clients
10 would be more aggrieved than anyone else in that particular
11 community.

12 MR. GROSS: Okay. These are five of the
13 properties that are immediately abutting and virtually the
14 closest properties to the subject property in application.

15 They did, before retaining Ms. Jordano and
16 myself, submit a letter requesting party status in opposition
17 on June 21st, and much earlier on April 5th, one of the
18 persons, Dr. Mary Carter, submitted a letter with extensive
19 reasons for the party status.

20 We're basically saying that immediate proximity
21 and issues of light, air, and privacy by a vertical extension
22 of this accessory building is the basis for party status.

23 CHAIRPERSON CROSS REID: Where in proximity to
24 the subject property are these property owners situated,
25 please, Mr. Gross?

1 MR. GROSS: Well, without getting out a map, one
2 is immediately abutting the subject lot on the west.

3 CHAIRPERSON CROSS REID: And that address?
4 What's the address or the person's name?

5 MR. GROSS: I don't have that right in front of
6 me.

7 CHAIRPERSON CROSS REID: What's the person's
8 name?

9 VICE CHAIRPERSON RENSHAW: The person's name.

10 MR. GROSS: 3258 O Street. It's in the letter
11 requesting the party status, the list of people and their
12 addresses, but just in terms of how they're situated --

13 CHAIRPERSON CROSS REID: But that's not the
14 Carter's letter?

15 MR. GROSS: A letter from all six. Perhaps this
16 map --

17 CHAIRPERSON CROSS REID: Well, we have this.
18 This refers to it. We have it.

19 MR. GROSS: Okay.

20 CHAIRPERSON CROSS REID: Give us the names of the
21 people that you represent.

22 MR. GROSS: Right. 3252 O Street, and then going
23 around the corner --

24 CHAIRPERSON CROSS REID: 3250 --

25 MR. GROSS: -- all of the lots going down to the

1 alley on 33rd Street.

2 CHAIRPERSON CROSS REID: 3252 and 3258 are the
3 two abutters?

4 MR. GROSS: Well, actually all of them going down
5 33rd Street. As you can see, 1323 33rd at the corner, I guess
6 that doesn't quite abut. Okay, and neither does 1321 quite.

7 CHAIRPERSON CROSS REID: Right.

8 MR. GROSS: But obviously they're very close, and
9 then 1319 and 1317, immediately abut, and one of the persons
10 resides in the building immediately to the south across the
11 alley.

12 CHAIRPERSON CROSS REID: And who is that?

13 MR. GROSS: Alan C. Mitchell.

14 MR. MITCHELL: We also requested party status in
15 a separate sheet.

16 CHAIRPERSON CROSS REID: Okay. Well, are you
17 representing him or are you representing --

18 MR. MITCHELL: I'm representing myself and the
19 other people on that sheet.

20 CHAIRPERSON CROSS REID: Okay.

21 MR. GROSS: I'm representing five.

22 CHAIRPERSON CROSS REID: Okay. Out of the five
23 that you represent, Mr. Gross, it looks like to me that there
24 are two, 3258 and 3252 O Street, that are abutters that would
25 be directly affected by this application. However, the others

1 -- and perhaps -- well, the other guy will make his own case,
2 but the ones on 33rd Street, I don't see how they would be more
3 aggrieved than anyone else in the community.

4 MR. GROSS: Well, actually, Madame Chair, if you
5 look at the --

6 CHAIRPERSON CROSS REID: 3258 directly abuts the
7 property, correct? And also 3252 on the other side.

8 MR. GROSS: Yes.

9 CHAIRPERSON CROSS REID: No?

10 MR. GROSS: The point I would make, Madame Chair,
11 is if you look at 1319 and 1317 33rd Street in relationship to
12 the location of the garage that would be extended in height,
13 the shallow rear yards of those properties look immediately
14 back upon the accessory building in question and will be very
15 directly affected.

16 CHAIRPERSON CROSS REID: Okay, all right. I can
17 see that.

18 What about 1327 and 1321? I would concede 1319
19 and 1317 perhaps.

20 MR. GROSS: Okay. Well, the other one would have
21 a view still quite close looking across, across. Now, there's
22 vegetation in between, but five months of the year is when the
23 leaves are not on the trees. There's still views through
24 there, and the subject is an excessive height in the middle of
25 the block.

1 CHAIRPERSON CROSS REID: But I don't think that -
2 - well, okay. I don't think that this would extend up that far
3 to --

4 MR. GROSS: The last point I'd made, Madame
5 Chair, is they agreed to present unified testimony when they
6 submitted it and not to take a lot of time with individual
7 testimony, and that's what we're prepared to do.

8 CHAIRPERSON CROSS REID: Okay. You're going to
9 represent them, and you're going to be the person who will do
10 the cross examination only?

11 MR. GROSS: Well, and direct testimony as a city
12 planner. And the idea would be simply that I would make our
13 statement of testimony on behalf of all, and if the Board had
14 questions of individuals, they can be available to answer
15 those.

16 CHAIRPERSON CROSS REID: Okay. Comments, Board
17 members, on this particular application?

18 COMMISSIONER MITTEN: Madame Chair, I guess just
19 a point of clarification. The dwelling at 3252 O Street,
20 either by the designation of the person's name or the address,
21 doesn't seem to be in the letter that was submitted in the
22 request. So I guess I want to clarify that you actually
23 represent the folks on the east and the west, because the
24 only --

25 MR. GROSS: No, it's only on the west.

1 COMMISSIONER MITTEN: Okay.

2 MR. GROSS: Actually I think it is only 3252.

3 COMMISSIONER MITTEN: I think 3258.

4 MR. GROSS: Fifty-eight? Okay.

5 COMMISSIONER MITTEN: Which is Mr. Vogt and Mr.
6 Laycock.

7 MR. GROSS: Okay.

8 COMMISSIONER MITTEN: Madame Chair, I think
9 despite the fact that all of this would be consolidated, and we
10 had this in another case recently, is we have to preserve the
11 standard for granting party status, and I would agree with the
12 comment that you made a moment ago, which is that 1317 and 1319
13 have I would say unique position relative to the property
14 because the more people you add in, the more you erode the
15 uniqueness of their relationship.

16 So I think 1317 and 1319 are uniquely affected
17 and should be granted party status, and the rest can testify as
18 individuals.

19 CHAIRPERSON CROSS REID: Oh, okay. So you
20 wouldn't even -- don't think that the two abutters on either
21 side of the building?

22 COMMISSIONER MITTEN: Not given the orientation.
23 Well, first of all, Mr. Gross only represents the folks at
24 3258.

25 CHAIRPERSON CROSS REID: 3258, right.

1 COMMISSIONER MITTEN: And their dwelling is
2 significantly removed from the garage as opposed to the folks
3 at 1317 and 1319.

4 CHAIRPERSON CROSS REID: Okay. I would go along
5 with that.

6 Any other comments, Board members?

7 (No response.)

8 CHAIRPERSON CROSS REID: All right. Mr. Gross,
9 we would --

10 MR. GOODMAN: Can I make -- before you rule on
11 this?

12 CHAIRPERSON CROSS REID: Yes.

13 MR. GOODMAN: I would like to say aside from --

14 CHAIRPERSON CROSS REID: And you have to give
15 your name and address.

16 MR. GOODMAN: Oh, I'm sorry. My name is Craig
17 Goodman. I'm the owner of 3254 O Street.

18 I agree with what you just said, Madame Chair,
19 and what you just said, Ms. Mitten. In addition, I would add
20 that this intervention by counsel and proffered expert
21 testimony came about a day prior to hearing. So we had no real
22 opportunity to prepare for an expert witness here, and we would
23 object to that, of course, in addition to the fact that they
24 didn't meet the distinction standard, not all of them.

25 There was one of the intervenors who filed early

1 for intervention status, was here at the last hearing. You've
2 identified her property, but the other ones basically have the
3 same comments that were made and addressed on behalf of the
4 general public.

5 CHAIRPERSON CROSS REID: Okay. Now, what are you
6 objecting to?

7 MR. GOODMAN: Proffered expert testimony at this
8 late date.

9 CHAIRPERSON CROSS REID: At this point what we're
10 dealing with is just party status.

11 MR. GOODMAN: I would agree.

12 CHAIRPERSON CROSS REID: And then when we go to
13 the opposition's -- the Appellant, you can then raise that
14 because right now we're just trying to deal with the party
15 status so that we can get into the case.

16 MR. GOODMAN: My clients did indicate in their
17 letter of three weeks ago that they might retain counsel or
18 other professional assistance.

19 CHAIRPERSON CROSS REID: Okay.

20 MR. GOODMAN: Without specifying who, of course.

21 CHAIRPERSON CROSS REID: Okay. All right. Party
22 status as regards to Murray Seller and Mary Carter, I move that
23 we grant them party status.

24 COMMISSIONER MITTEN: Second.

25 CHAIRPERSON CROSS REID: All in favor.

1 (Chorus of ayes.)

2 CHAIRPERSON CROSS REID: All right. Thank you
3 very much.

4 And then the next person who had requested party
5 status.

6 MR. MITCHELL: Yeah, my names is Alan Mitchell,
7 and I reside at 1301 33rd Street, N.W.

8 CHAIRPERSON CROSS REID: You reside where?

9 MR. MITCHELL: 1301 33rd Street, N.W., which is
10 on the south side of the alley in question, in the vicinity of
11 the property in question.

12 MS. BAILEY: Excuse me, Mr. Allen. Did you make
13 a written submission?

14 MR. MITCHELL: Yes, I have a copy of it here. It
15 was mailed in last week. You should have -- I sent ten copies.

16 CHAIRPERSON CROSS REID: Oh, that's an apartment
17 building. Let's see.

18 A written submission. Let me see if I have that
19 here. I don't --

20 MS. BAILEY: Did that meet the 14-day
21 requirement, sir?

22 MR. MITCHELL: I believe it did.

23 MR. GOODMAN: No, I don't believe it did, Your
24 Honor.

25 CHAIRPERSON CROSS REID: Okay. Well, go ahead

1 and tell us the reason why you feel that you should be granted
2 party status, and is it just yourself or are you --

3 MR. MITCHELL: No, I'm representing the other
4 people on that sheet who have signed.

5 CHAIRPERSON CROSS REID: Okay.

6 MR. MITCHELL: Dr. Julia Lamb, Mr. and Ms. Dan
7 Blumberg, Mr. and Ms. Pierre Lesko Baker, Ms. Ann Walsh, Dr.
8 and Ms. John Queenan, and Dr. Anthony Clark Arnet.

9 And the reason we're concerned is because of the
10 negative impact that this variance will have on our
11 neighborhood.

12 CHAIRPERSON CROSS REID: Okay. Can you explain
13 how you and your group feel that you're more affected or more
14 aggrieved than anyone else in the community?

15 MR. MITCHELL: We feel we're affected and
16 aggrieved by the fact that this will increase residential
17 density in our neighborhood. It may have deleterious effects
18 on public safety, and it may increase parking congestion by
19 setting a dangerous precedent not only for the alley in
20 question, but for the entire neighborhood.

21 CHAIRPERSON CROSS REID: Okay, but, Mr. Mitchell,
22 you do understand that party status is a designation that is
23 reserved for those persons who are more uniquely aggrieved by
24 the application, more so than anyone else in the immediate
25 neighborhood.

1 MR. MITCHELL: So you mean people that have
2 abutting properties? Is that what you mean by that?

3 CHAIRPERSON CROSS REID: Yeah, you have a special
4 -- there's something unusual or something that makes you more
5 aggrieved than anyone else, and quite frankly, at this point I
6 don't think you've made that case persuasively.

7 But you can testify.

8 MR. MITCHELL: I certainly will testify then.

9 CHAIRPERSON CROSS REID: I mean you will
10 certainly be given an opportunity to testify.

11 MR. MITCHELL: We will testify then, surely,
12 surely. I'll testify as an individual then.

13 CHAIRPERSON CROSS REID: Okay. Unless do other
14 Board members have any other suggestions, then that would
15 include the persons who live in that group located at 1301 33rd
16 Street.

17 MR. MITCHELL: Surely.

18 CHAIRPERSON CROSS REID: You can all participate
19 and testify as individuals.

20 MR. MITCHELL: Thank you.

21 CHAIRPERSON CROSS REID: Okay. Any comments?

22 MEMBER GRIFFIS: A quick clarification, Madame
23 Chair, for the gentleman. He can also by this letter represent
24 these people in his testimony. He is just not a party, which
25 means he just won't be able to cross-examine other testimony;

1 is that correct?

2 CHAIRPERSON CROSS REID: Right. He's going to --
3 let me understand this. You're going to testify on behalf of
4 those individuals? Okay. That's fine.

5 Let us dispose of this matter. All in favor of
6 denying party status to Mr. Mitchell and Co., at 1301 33rd
7 Street?

8 (Chorus of ayes.)

9 CHAIRPERSON CROSS REID: Wait a minute. Was
10 there a -- there wasn't a motion, but I guess it's all right.
11 I think we should make the motion. I would recommend that we
12 deny. I would move that we deny.

13 VICE CHAIRPERSON RENSHAW: Second.

14 CHAIRPERSON CROSS REID: And then all in favor.

15 (Chorus of ayes.)

16 CHAIRPERSON CROSS REID: Just in case.

17 All right. Now, sir.

18 MR. VOGT: Madame Chair, I'm Tom Vogt, and I'm
19 one of the owners of 3258 O Street, N.W., and our property
20 abuts the Goodman's property. Our house ins to the west, and
21 we abut on the south and east side, and we are requesting party
22 status.

23 CHAIRPERSON CROSS REID: Did you submit a letter?

24 MR. VOGT: Yes.

25 MEMBER GRIFFIS: Madame Chair?

1 CHAIRPERSON CROSS REID: Yes.

2 MEMBER GRIFFIS: I may be a little confused on
3 names and addresses, but aren't you a part of the first party?

4 MR. VOGT: Yes, the first --

5 MEMBER GRIFFIS: 3258?

6 MR. VOGT: 3258.

7 MEMBER GRIFFIS: So now you are asking for?

8 MR. VOGT: Party status.

9 MEMBER GRIFFIS: Party status.

10 CHAIRPERSON CROSS REID: Well, but we only gave -
11 - out of that first group we only gave it to --

12 MEMBER GRIFFIS: Oh, I'm sorry. You're
13 absolutely right.

14 CHAIRPERSON CROSS REID: -- two of the first,
15 1319 and 1317.

16 So now you're Mister?

17 MR. VOGT: Vogt.

18 CHAIRPERSON CROSS REID: Vogt.

19 COMMISSIONER MITTEN: He's part of Nate Gross.

20 MR. VOGT: Right.

21 CHAIRPERSON CROSS REID: But, Mr. Vogt, we had
22 already denied party status to everyone in Mr. Gross' group
23 except for 1319 and 1317. That was the decision that we made.

24 MR. VOGT: Why were we denied party status,
25 Madame?

1 CHAIRPERSON CROSS REID: Well, the Board felt
2 that even though you were an abutter in regard to this
3 accessory addition in the rear, that you were no more aggrieved
4 than others in the community, and that 1319 and 1317 appear to
5 be more aggrieved.

6 MR. VOGT: But we would be looking directly at it
7 from our backyard.

8 COMMISSIONER MITTEN: Perhaps I could assist the
9 Chair in explaining this.

10 CHAIRPERSON CROSS REID: All right.

11 COMMISSIONER MITTEN: There were a group of five
12 properties that requested party status, and the more people you
13 add into your group, potentially you erode the nature of
14 uniqueness, which is essentially to being granted party status,
15 and so we focused in on people who we felt had a unique
16 relationship to the property that was unlike any other, and
17 your property is similarly situated to the one at 3252 and
18 arguably at 1327 33rd Street and so on.

19 And it was in our judgment we decided to grant
20 party status to two individuals rather than any other because
21 we felt that you did not have a unique. You do certainly have
22 a relationship to the property, but it doesn't rise to the
23 level of party status.

24 And I would just add that the purpose of having
25 legal representation is that they speak for you.

1 MR. VOGT: All right. Thank you.

2 CHAIRPERSON CROSS REID: But you will be allowed
3 to testify individually.

4 MR. VOGT: Fine. Thank you.

5 CHAIRPERSON CROSS REID: Okay. Does that
6 conclude all persons that have requested party status?

7 Again, thank you very much.

8 So we have now, just to reiterate, we have two,
9 Mr. Gross representing two persons, and also -- who was the
10 other one?

11 VICE CHAIRPERSON RENSHAW: That's it.

12 CHAIRPERSON CROSS REID: Oh, we only have Mr.
13 Gross representing. Okay. Thank you very much.

14 All right. Okay. Mr. Goodman.

15 MR. GOODMAN: Thank you, Madame Chair.

16 My name is Craig Goodman. I'm the owner of the
17 property at 3254 O Street. All of the 52s and 58s got me
18 confused there.

19 But I do own the property. I don't know if
20 you've got your attachments, but I will try to point it out to
21 you.

22 CHAIRPERSON CROSS REID: Okay. Mr. Goodman, have
23 you been sworn in?

24 MR. GOODMAN: Well, I have, but I'll swear again.

25 CHAIRPERSON CROSS REID: No. Has everyone who

1 intends to testify been sworn in?

2 PARTICIPANTS: Yes.

3 COMMISSIONER MITTEN: Yes. Mr. Goodman, you need
4 to stay close to the microphone, too.

5 MR. GOODMAN: Thank you.

6 Okay. Well, it may be difficult, but I'll try
7 to.

8 Our application is basically for a five foot,
9 five foot variance on this straight 15 foot height limitation
10 that is in code Section 2500.4 for all accessory buildings in
11 Washington, D.C., except under 2500.5, which allows 20 feet for
12 a maid's quarters in an R-1 district.

13 The Zoning Administrator issued a ruling on this
14 saying that we needed a five foot variance, a height variance.

15 We went back for a clarification to the Zoning
16 Administrator to make sure that no use variance was needed. In
17 writing and as part of the record here, he has indicated that
18 use of this accessory building, our garage to have living
19 quarters for a domestic employee was an accepted use not only
20 in an R-1 district, but in an R-3 district.

21 What we have is a unique historical property that
22 requires this additional five feet on its accessory building so
23 that because of certain conditions that are inherent in the
24 land that we're going to review with you in a minute, and we
25 have met repeatedly not only with neighbors, but with the city

1 and with everybody else we could meet with or who would meet
2 with us to minimize any potential impact on the public or the
3 neighbors, including height and privacy and light and all of
4 these issues that you'll hear about more in a minute.

5 We originally had a 31 foot building proposed
6 here, and when the neighbors got upset, we completely revamped
7 the proposal, and we reduced it down to 20 feet, which is the
8 height limitation for a second story for a garage for an R-1-B
9 neighborhood.

10 We have a lot that is unusual for an R-3
11 district. We have an R-1 size lot. We have a fully detached
12 historic home on an R-1 sized lot. We have less than 35
13 percent of the entire lot side planned to be built out
14 currently or ever will be built out even after this addition.

15 With this addition, we will have less than 35
16 percent of the total lot size built out. Technically, under
17 the code in an R-1 district you are allowed this 20 foot second
18 story addition to a garage, but because the way the code is
19 written, you have to get a variance if you want to do it in an
20 R-3 district, although, frankly, after practicing law for 25
21 years, administrative law, I'm still having difficulty with
22 that interpretation.

23 We are not here as an appeal of the Zoning
24 Administrator's interpretation. We're here strictly to prove
25 the three pronged test applies and that this is no impact on

1 the public or the map.

2 I'd like to, if you would, before I go any
3 further, Attachment 1 to my petition. I filed a brief in here.

4 I'm going to go through it very briefly.

5 Attachment 1 is after we changed it to 20 feet
6 from 30 feet, we went through the neighborhood and we visited
7 with as many neighbors who would visit with us, and we've
8 gotten over 65 of our neighbors have no objection. They have
9 withdrawn prior objections to the 31 foot height or they
10 actively support what we're doing. One of them, of course,
11 abuts us to the right. You had mentioned 3252.

12 But we went throughout the neighborhood. We
13 tried very hard to make sure we minimized any impact on the
14 neighbors or the neighborhood.

15 When we went to the ANC, just so that you know,
16 the ANC did agree with us on four very important issues, but
17 recommended against this project because they were afraid, and
18 indeed, Office of Planning is afraid, that we are going to use
19 this second story addition either for student housing or for
20 rental property.

21 Now, when we filed this application we
22 anticipated this objection. We have no intention. Let me
23 repeat that in the microphone on the record. We have no
24 intention now or any time in the future to use this property as
25 a rental property for either students or non-students. If any

1 renter comes into this property, it is our privacy that will be
2 invaded. It is us who will suffer.

3 This project looks back on our house. Anybody
4 who is living above our garage will be looking right into our
5 living room, right into our bathroom, right into our kitchen,
6 right into my daughter's room.

7 The views that you have just allowed in as
8 parties are going to be side views. We'll show you in a minute
9 there are no windows on that side, and there is a great deal of
10 foliage, and we're going to go over that in a minute.

11 All windows on this property are going to be
12 opaque so people will not be able to see in or see out. So I
13 just want to make sure that you're aware of that.

14 The total house that we have on this R-1 sized
15 lot is 2,300 square feet above ground. It's got three bedrooms
16 above ground. It's got one bedroom and a lot of storage
17 underground. Technically it doesn't qualify. Well, when I
18 bought it it didn't qualify as habitable space. I think under
19 the code it's not considered habitable space.

20 But for the record, we use our basement almost
21 all the time. It's not technically habitable space, but we're
22 using it. We've got a bedroom downstairs that's in use more
23 than 40 percent of the time, but in the record I put in 40
24 percent of the time.

25 In order to help our neighbors with this project,

1 we have reduced the height of the structure considerably. We
2 have installed but not planted a foliage screen, and I'm going
3 to try and show you some of these things in one minute.

4 Those are the properties that you just admitted
5 as parties.

6 Both the ANC and the OP had found that this
7 property is, in fact, unique. It is unique both in size, its
8 historicity. It's got a historic boxwood garden in the back.
9 It's also a very old historic boxwood garden. It's got an
10 unusually large double cherry tree. It's got four other
11 ornamental trees. It's got 95 bushes in the back. It has no
12 access from any street from the back into the back yard if we
13 ever wanted to get moving equipment or land moving equipment.

14 And in terms of uniqueness, there has been both
15 the ANC and OP found this property unique, and if you need
16 additional information on how unique it is, I'll be glad to go
17 into it in more detail.

18 The most important point of the variance
19 application is the three prong test, the practical difficulties
20 that are inherent in the land. The difficulty in using this
21 property in strict compliance with any other code provisions,
22 and I'd like to show you that, if you don't mind.

23 I do want to say just for the record these trees
24 are not planted yet. We have not planted them for a number of
25 reasons.

1 MS. BAILEY: Mr. Goodman.

2 MR. GOODMAN: I'm sorry.

3 We have not planted these trees yet for a number
4 of reasons, one of which is if we planted them now and we had
5 construction in there, they would get torn up and they would
6 be destroyed.

7 There are other reasons, legal reasons, but I
8 don't want to go into them right now.

9 What we did is we installed them so you could see
10 visually what we can do to make this an even more acceptable
11 view.

12 Our property is situated on an alley, and I don't
13 know if you can see this, although it's important for you to
14 note. This is our eight foot garage right here. Immediately
15 next to it is a one story building that goes up to about 15
16 feet, which is a garage.

17 Next to it is another garage which goes up to
18 about 19 feet, and next to that is a three story house. Our
19 addition, our addition, if you would like to point this out to
20 them, our addition when completed would be equal to the
21 property not immediately next door, but immediately next door
22 to that. It would be equal approximately to that structure
23 right there.

24 Currently if you would point out exactly what our
25 neighbors are looking at to the side of the structure, no, the

1 rooftop, that is the current view of our neighbors that you
2 have admitted as parties, these two properties right here.
3 This is that three story building. This is the 20 foot --

4 COMMISSIONER MITTEN: Stay near the mic.

5 MR. GOODMAN: I'm sorry.

6 That gray structure is the 20 foot -- that's a 20
7 foot, approximately a 20 foot building, which is one building
8 over, and the red cement is approximately 15 feet. Ours is
9 eight feet. It's unusually short, and we are trying to take it
10 up to 20 feet, which is the minimum amount of feet we need in
11 order to get head room and, by the way, it will not be 20 feet
12 across the top. It will only be 20 feet at the peak. It will
13 be about 18 feet where the first intervenor is going to be.
14 It's about a three foot variance on her side. It's a peak of
15 20 feet.

16 We are hoping once it's finished we can put a
17 full foliage screen up, not only for those houses, but for all
18 of the other neighbors. This is currently the view in the
19 summertime, of course. This is the view, Attachment 6, yes,
20 from one of our neighbor's houses that directly abuts us.
21 That's the 52. That's the ones that were not granted party
22 status.

23 This is also over here, Attachment 5, is a view
24 of the foliage screen from public space. This is another view
25 of the three levels just on this block.

1 Now, on this block we also have second stories on
2 garages, and on the next block -- this alley is only two blocks
3 long. Our block is 20 feet wide in most places. At my
4 particular property it's close to 25, 27 feet wide. It's the
5 widest point on the entire alley.

6 On the next block up, the alley is only nine feet
7 wide, and you've got a number of second story additions on
8 garages. To my knowledge, none of them are student housing.
9 I'm only aware of one of them currently being occupied, and
10 that's being occupied by the owner who is doing renovation of
11 the major house.

12 Now, I'd like to focus on the land itself and why
13 building out this space in any other way would be a greater
14 impact on the public, greater negative impact, and would be
15 practically either difficult, in my opinion, legally
16 impossible, but I will at least put on a case for practical
17 difficulty.

18 I will also submit in the record that it's
19 legally impossible, but we'll get into that in one second.

20 The difficulties that are inherent in this land
21 are many-fold, and OP addressed them. We did not have a chance
22 to address them in front of the ANC because our whole ANC
23 proffer was on neighborhood issues.

24 We had asked the ANC to attach our submission to
25 its report. It did not do so. We would like to submit it into

1 the record here today formally because we did not receive the
2 Zoning Administrator's opinion that we didn't qualify as a
3 matter of right until literally we finished our ANC
4 presentation.

5 So our ANC presentation was solely on all of the
6 issues that were raised by our neighbors and how we addressed
7 them, and I'd like to submit that in the record as part of my
8 testimony here today.

9 So we did not at all address the three prong test
10 in front of the ANC because technically all the way up and
11 through the ANC meeting, we were under the impression we had an
12 R-1 size lot. We were asking for R-1 relief in an R-3
13 district.

14 The code, as you know, allows uses and buildings
15 in an R-1 district in an R-3 district. The most restrictive
16 code section is R-1, and compared to that, R-3 is significantly
17 less restrictive.

18 We were asking for a building and a use that was
19 already permitted in R-1. We had an R-1 size lot. We had
20 5,533 square feet. In an R-1-B district, all you needed was a
21 5,000 square foot lot and a 40 percent density.

22 All of the issues before the ANC were density
23 related issues. We not only met the R-3 density requirements.
24 We far exceeded them.

25 We had the only lot on this block that's fully

1 detached, with 5,533 square feet. We're the only one in the
2 entire alley with this kind of space. Our lot is one third as
3 dense as either of the two other intervening parties, and to my
4 knowledge, virtually any of the other properties abutting this
5 alley on either O or N Street. That's very important.

6 Now, to go to practical difficulties. We have a
7 long list of them. It doesn't appear because it's a gorgeous
8 property, and let me just say this. I love this property. We
9 want to stay here for the rest of our lives. We never want to
10 rent this thing out. We'd like to give it to our daughter if
11 we can, and I don't think she would ever want to rent this
12 thing out. It is a beautiful property.

13 It is a small property, which is why we're asking
14 for additional living space, but the back of it is phenomenal.

15 The back is a historic boxwood garden. It's got a mature
16 cherry tree, a large one, 95 bushes, four ornamental, and as
17 you'll see how it's situated next to the back of the house.

18 Now, there are several unusual conditions also
19 inherent in this property. We have some kind of an
20 archeological site immediately behind the back of the house.
21 We've had three or four people tell us that they believe it
22 could be the remnants of a slave's tunnel. We don't know that
23 for sure, and I'm not an -- although my hobby is archeology,
24 I'm not an archeologist.

25 It's two fully enclosed brick rooms that we

1 haven't excavated. They go somewhere. We don't know where.
2 They could go right to the cellar of our house. We're not
3 certain, but there are two separate brick rooms with vaulted
4 brick ceilings underneath the surface of the house.

5 If you could show them where it's situated on the
6 lot, it's literally behind the back of the house, and it could
7 very well reach back to the house. We are not certain.

8 We have also encountered a granite wall that's
9 not a normal granite wall. It looks like a fortress wall. We
10 have had a workman try to pick ax it. Absolutely impenetrable.

11 In order to remove that wall, we would have to
12 blast. If it's tied into any of the foundations in the
13 neighborhood, that would be very problematic.

14 And I might say you can't see it. Maybe you can
15 see it from our pictures, but there is no access to the back
16 unless you airlift earth movers back there to start digging out
17 foundation to increase the size of the home. You would have to
18 literally airlift earth movers, which I guess is possible, but
19 in moving the earth, they would also significantly affect this
20 property.

21 These boxwoods are historic. To my knowledge,
22 the entire garden is a historic garden, but more importantly,
23 prior owners of this house have tried to extend this house
24 beyond its current limitations, and the Fine Arts Committee has
25 flatly rejected that. Indeed, not only have they rejected it.

1 They made them keep the original porches and allowed them to
2 expand out to the porch, but not beyond it. They had to even
3 keep the railings of the original porch, and that would be
4 visible. If you'd like to view it yourself, it's visible in
5 one of our attachments. Let me see which attachment it is.
6 Oh, it's Attachment 3, second picture.

7 You can see the railings from the original house,
8 we were forced -- we weren't. Our prior owners were forced to
9 keep that one, expanding the house out to include a covered
10 porch that historically was above the family room downstairs.

11 So I would submit not only is there a list of
12 practical difficulties, but I would submit there's a legal
13 impossibility to expand this house out either 25 feet or to
14 develop this lot at 60 percent limitation for R-3, for an R-3
15 dwelling.

16 One second, Ann. I want to get to the views in a
17 second.

18 By the way, another property had requested second
19 story maid's quarters on this alley about 20 years ago. OPA at
20 that time thought it had no negative impact on the plan. They
21 thought there was no impact on light and air. There was no
22 impact on the public good.

23 I believe that their opinion today is relatively
24 consistent with that.

25 I will -- hold on. Let me just get to the other.

1 As you know, if this structure or maybe you
2 don't; if this structure was requested on the exact same size
3 property one mile away, it would be permitted as a matter of
4 right. That's very important.

5 ANC. As I said to you, the ANC -- we did not go
6 over the three pronged test, the practical difficulties, the
7 legal impossibilities, because we really did focus in on all of
8 the issues affecting our neighbors, specifically light and air.

9 What you see, what has been prepared is a view
10 from the second story, not the third. The third story of these
11 properties are totally unaffected, but this is the light. The
12 yellow is the views and the light available. Well, there's
13 only one of those as a party. I think that one's a party, but
14 she has the same view. Both of them have the same view.

15 MS. GOODMAN: And this shows how the view would
16 be affected. So this might --

17 CHAIRPERSON CROSS REID: Would you speak on the
18 mic and give your name and number. Give your name and address
19 and speak into the mic, ma'am.

20 MS. GOODMAN: I'm Ann Goodman.

21 MR. GOODMAN: And she's an owner.

22 CHAIRPERSON CROSS REID: Same address.

23 MR. GOODMAN: Yes.

24 CHAIRPERSON CROSS REID: Okay. Tip the mic that
25 way, please.

1 MS. GOODMAN: This person has been granted party
2 status, and this shows without vegetation, with no vegetation
3 that the views of, well, both of these people -- I'll do them
4 together -- that it would still have an extensive cross-
5 courtyard view all the way to St. John's.

6 Of course, there is vegetation, and there are
7 still pick-ups that go across here. They would not have the
8 alley view. This would be like from the second floor; this
9 would be not part of their view anymore.

10 MR. GOODMAN: And the other property, this is Dr.
11 Carter's property. This is the other party -- the other
12 property that was granted party status. The yellow, again, is
13 the remaining view that she has after construction.

14 Now, this is just from her kitchen window, just
15 from the second story of her house. The third story on all of
16 these properties are totally unaffected because, again, this is
17 only a 20 story -- a 20 story Trump Towers in the middle.

18 (Laughter.)

19 MR. GOODMAN: A 20 foot total size of the
20 building.

21 MS. GOODMAN: These are also the other two story
22 garages in the alley, and these are three story. These things
23 are three story.

24 MR. GOODMAN: When ANC reviewed this, they found
25 no light impact at all. Also, on the parties that you've just

1 put up there, we did a light study in the middle. It was in
2 May after there were complaints that the light was affected.

3 Because of the orientation of the property, the
4 first story of that property right there had full sun by 7:30
5 a.m. in the morning, and we have a picture of the light that is
6 available both from public space, and that would be Attachment
7 7 in your file.

8 So you get a good view of how much light even
9 with the foliage screen up. You can see the foliage doesn't
10 even cast a shadow on that. It's not material.

11 OP did find that their view will be changed. I
12 mean, we can't build there and not change their view, but it
13 would not impact their light and air.

14 The ANC also agreed with us that there would be
15 no density impacts.

16 Ann. Hello. Sorry about that.

17 The ANC also agreed that there would be no
18 density impacts. There were a lot of issues about density and
19 over crowding.

20 Now, it is true. We have -- the two parties that
21 you've allowed in are landlords, and another one who wants to
22 testify is a renter in a very heavily densely populated -- it's
23 a zero lot line apartment house. It is just incredibly densely
24 populated, and as you can see from this picture over here,
25 there are an enormous amount of demands being placed on public

1 property because of the high density of that apartment house
2 and the high density of having renters.

3 What's also not obvious here is when renters park
4 in the alleyway, that alleyway is literally impassable. So
5 there is parking, and there is density related issues, but I
6 would submit to the court that our property is the widest
7 property on that alley, has the least amount of density impacts
8 on this entire neighborhood. We're one third as dense as any
9 other property on that neighborhood, and this entire use --
10 and, by the way, 101 of the code which protects light and air
11 consistent with the public good keys off of 403.2, which
12 basically is the density limitations.

13 Not only does this property meet the density
14 limitations of R-3, but we meet the density limitations of an
15 R-1 as well. So we exceed the light and air requirements of an
16 R-3 property.

17 Other issues that we've brought up in our brief,
18 and indeed, ANC brought up, and I just want to say for the
19 record, we, too, object to having a multi-story, multi-rental
20 unit property on our property. We do not want a multi-rental
21 unit property on our property. That is not what we asked for.

22 That's not what we're here for. We want to use it for a maid
23 and maybe one of our parents, God forbid, if they get old and
24 infirm and they need help, that they don't have to put in a
25 nursing home immediately; that there is someplace that we can

1 put them that we can accommodate them.

2 ANC and OP and we and our neighbors are extremely
3 concerned that we are going to rent this out to students or to
4 somebody, and we're going to put a lot of density requirements
5 on the city, on the neighborhood. We are not.

6 Indeed, by building up and getting more storage,
7 we've been able to free up five full parking spaces off street.

8 We've got two cars, and ANC recognized that in their ruling,
9 as well.

10 In terms of precedent, we would submit that this
11 is not allowing an R-1 size lot to have a five foot variance to
12 construct a second story to an accessory building for an
13 accessory use, is not under these facts and circumstances, is
14 not precedent for any of these other smaller R-3 units to be
15 adding illegal basement rental units or illegal student rental
16 units. This is not precedent for that, and indeed, we don't
17 want to be precedent for that.

18 If there were one here, if somebody came to me
19 and said, "Did you know the Goodmans are putting a three story
20 multi-rental unit housing in the back yard?" we would object to
21 it as well. That is not what we're here for.

22 The use is permitted as a matter of right, I
23 might add. It's totally consistent with the intent and purpose
24 of the code, the map. Both OP and I believe the ANC did not
25 find any inconsistency. They did find the site affected -- the

1 ANC found the site affected by -- of those two properties
2 affected. OP did not believe it rose to the level of an
3 impairment of light and air.

4 MS. GOODMAN: Could I make a comment also?

5 CHAIRPERSON CROSS REID: Un-huh.

6 MS. GOODMAN: This shows the two properties that
7 were given party status. This building directly behind me, the
8 one -- the red line, this is Mary Carter and this is the
9 neighbor. So this person is only eight foot and four feet
10 back, and then it would be the five. Like that's the section
11 we're asking for.

12 And then over here it wouldn't reach the five
13 foot. It would just be -- it's 12 foot, eight inches, and like
14 less than four feet and three feet there. I mean, that's the
15 area that we'd be asking for the variance.

16 MR. GOODMAN: In terms of the public good and the
17 zoning, consistent with the zoning map, as I said, in an R-1
18 district this is already permitted. We've got multiple second
19 story additions to garages on this very alley. Several are --
20 at least one is occupied that I know of, none of which are
21 rented, none of which are rented that I'm aware of. I'm not
22 aware of any rentals on this alley.

23 The only renters I'm aware of are the two parties
24 that you've allowed in. They are directly on the alley.

25 In terms of parking, there are none. Let me see

1 if there are any other issues that -- and the map.

2 MS. GOODMAN: Safety. He said safety before.

3 MR. GOODMAN: The density issues and the public
4 safety issues were addressed at the ANC, and I'd like to submit
5 that for the record.

6 Ms. Roberts from OP has done a site visit on the
7 house. OP is recommending against this. However, they have
8 also recommended a condition in the event that this variance is
9 granted that this variance would be conditioned on no rental of
10 this property and a continuous check for five years to make
11 sure there's no rental of this property.

12 Neither of those conditions are problematic. We
13 have no intention of renting the property.

14 And in terms of the consistent with the zoning
15 code, OP has found that it was consistent both because there is
16 precedent, and secondarily, I mean, it's clearly in the code to
17 permit this kind of a use, and so it's consistent with both the
18 use and the existing precedent, and it would not set a
19 precedent for illegal renting units.

20 I thank the Board for listening to our appeal.

21 CHAIRPERSON CROSS REID: Okay. Thank you very
22 much, Mr. Goodman.

23 Questions, Board members?

24 COMMISSIONER MITTEN: Madame Chair, I know that
25 there's a difference of opinion between the Office of Zoning

1 and the Office of the Zoning Administrator regarding whether or
2 not this necessitates a use variance, and I think now is as
3 good a time as any to at least put on the record that I believe
4 that the interpretation of the Office of Zoning is accurate,
5 and that this does necessitate a use variance.

6 And I guess it would be up to the Board as a
7 whole to decide whether or not this Applicant has to meet that
8 burden of proof.

9 CHAIRPERSON CROSS REID: Well, I think that the
10 issue was with the statement that was submitted by Mr. Bellow,
11 and he's here. I don't know if you want to have him come up
12 and explain.

13 MR. GOODMAN: That issue was put before the
14 Zoning Administrator.

15 Your Honor.

16 CHAIRPERSON CROSS REID: Mr. Goodman.

17 MR. GOODMAN: Yes.

18 CHAIRPERSON CROSS REID: One issue that was
19 raised as it relates to Section 2500 and subsequent uses in
20 building, and specifically 2500.6 when it refers to the side
21 yard setback, can you please --

22 MR. GOODMAN: Thank you for raising that.

23 CHAIRPERSON CROSS REID: -- give us your comments
24 as to how it pertains to this.

25 MR. GOODMAN: Yeah. In R-3 zones side yards,

1 there are zero side yards in an R-3 zone. This is a unique
2 property. It's got side yards on both sides. There is a 40
3 foot height limitation that OP noted in their document, and
4 just for the record, before we went about this project, we
5 purchased a four foot strip of land directly next to this
6 structure. So it now has a side yard, and it is 40 feet in
7 width. So we corrected a nonconforming use as it relates to
8 this structure.

9 There is no other land to be had. It literally
10 is now semi -- it is a semi-detached structure. It is not
11 conforming. Obviously it's been there for 150 years, but we
12 have improved it to the maximum allowed by practicality. There
13 is no other land there.

14 And in terms of building out, I forgot to mention
15 this. If we built out our property, I mean, it never occurred
16 to me to even think about it, but assuming CFA allowed this
17 historic structure to be torn down and built out, the impact on
18 our neighbors, both sides, would be far greater than this five
19 foot variance on this out building because this out building is
20 somewhere between 28 and 25 feet from the structures, the
21 exterior structures of the two nearest properties, whereas the
22 properties immediately abutting us on either side were within
23 ten feet of each other.

24 So not only would light and air be impacted, but
25 the view and privacy would be impacted far greater if we built

1 out our structure to accommodate this use.

2 In terms of the use -- oh, side yard. We
3 finished -- one correction on the OP report. The rear yard
4 number is incorrect, and when we get to the OP we could correct
5 that when we get to the report.

6 CHAIRPERSON CROSS REID: Okay. Thank you.

7 MR. GOODMAN: Thank you.

8 PARTICIPANT: Madame Chair, can I make a factual
9 comment?

10 COMMISSIONER MITTEN: Could I just make sure that
11 we bring this point to some kind of closure?

12 CHAIRPERSON CROSS REID: Yes. Hold on one
13 second. During cross examination you may have the opportunity
14 to question Mr. Goodman, but not to testify at this point, but
15 you will have an opportunity for that.

16 COMMISSIONER MITTEN: Madame Chair, on the issue
17 of the use variance, and I think we were --

18 CHAIRPERSON CROSS REID: We haven't gotten to
19 that yet.

20 COMMISSIONER MITTEN: Oh, okay. I just wanted to
21 make sure that we didn't get distracted by side --

22 CHAIRPERSON CROSS REID: No, no, no, no.

23 COMMISSIONER MITTEN: Okay, great.

24 CHAIRPERSON CROSS REID: That was something that
25 was raised by Ms. Sansone, that she didn't want to get kind of

1 overlooked.

2 COMMISSIONER MITTEN: Okay.

3 CHAIRPERSON CROSS REID: But now back to the use
4 variance issue, in that Mr. Bellow is here in the hearing room,
5 we would like to ask him to come forward and to address this
6 whole issue about his interpretation as to whether or not there
7 is a use variance required.

8 Can you come forward, Mr. Bellow?

9 MR. BELLOW: Good afternoon.

10 CHAIRPERSON CROSS REID: Good afternoon. Your
11 name and address.

12 MR. BELLOW: My name is Toya Bellow with the
13 Zoning Review Branch of DCRA.

14 CHAIRPERSON CROSS REID: Okay. Ms. Mitten, did
15 you wish to address the question?

16 COMMISSIONER MITTEN: Sure. I'd be happy to. In
17 the letter that you sent to Mr. Goodman explaining the relief
18 that he would need, you made an observation that in the event
19 that the Board of Zoning Adjustment grants relief for the
20 erection of a two story accessory building, the devotion of the
21 second story to a domestic employee living quarters is allowed
22 as a matter of right since the use is already allowed in the
23 more restrictive R-1 district.

24 MR. BELLOW: That is correct.

25 COMMISSIONER MITTEN: And if you feel

1 disadvantaged by not having your papers before you, I'd be
2 happy to give you this copy. Okay.

3 MR. BELLOW: Thank you.

4 COMMISSIONER MITTEN: Now, the second of the
5 ordinance where the right to have this sort of living quarters
6 for a domestic is in Section 2500.4 -- excuse me -- 2500.5, and
7 it's exclusive to the R-1-A or R-1-B districts.

8 And as you well know, when the ordinance
9 buildings on itself, it makes specific reference to the
10 sections in previous zoning districts that it's folding into
11 subsequent districts, and the districts are those in Chapter 2
12 and Chapter -- well, let's see. They're set forth, I guess in
13 Chapter 2 exclusively.

14 So I guess I'm failing to see how you interpret
15 that this specific provision of the R-1 district, that is, that
16 arises from Section 2500.5, is folded into the R-3 district.

17 MR. BELLOW: Because if you look at the section
18 under the R-3 zone that allows accessory uses and buildings,
19 the subsection, I believe, refers to accessory uses and
20 buildings allowed under 200, 202 and 203.

21 COMMISSIONER MITTEN: Yes.

22 MR. BELLOW: And the statement is continuous in
23 Subsection B that other accessory use is allowed, and in
24 Section 2500 there isn't any specific language that limits the
25 use of an accessory structure if in the event the two story

1 accessory structure were to be allowed by the Board of Zoning
2 Adjustments.

3 From a use provision standpoint, when a use is
4 first allowed in the more restrictive zone, it is automatically
5 allowed in the less restrictive zone.

6 COMMISSIONER MITTEN: Well, does it have any
7 meaning for you that that particular provision is called out
8 separately in Chapter 25?

9 MR. BELLOW: Well, one has to view the situation
10 this way. The only way that a two story accessory structure
11 would ever be allowed in an R-3 zone is if the Board of Zoning
12 Adjustment were to grant relief for such a structure to be
13 constructed.

14 The use of the second floor, if granted by the
15 Board of Zoning, would not be an issue because that use is
16 already allowed in the more restrictive zone.

17 COMMISSIONER MITTEN: Well, let me just bring
18 this point home in your reference to Section B, and I admire
19 recall of these things. It says, "Other accessory uses,
20 buildings or structures customarily incidental to the uses
21 permitted in the R-3 districts under provisions of this
22 chapter." That would be Chapter 3.

23 So still we're not --

24 MR. BELLOW: Well, again, if a second story floor
25 that's allowed to be used for purposes of living quarters for a

1 domestic employee is allowed in the more restrictive zone, then
2 that use is customarily incident to all of the uses in the
3 residential districts.

4 COMMISSIONER MITTEN: So you're saying the two
5 basically go hand in hand?

6 MR. BELLOW: Well, what I'm doing is I'm
7 separating the issue of an accessory building from an accessory
8 use. Obviously the language is clear that in an R-3 zone the
9 only way that an accessory building with two stories or 20 feet
10 high would ever be built is if the Board of Zoning Adjustment
11 approves it. So it is in the purview of the Board of Zoning
12 Adjustment to consider whether to allow that structure or not.

13 COMMISSIONER MITTEN: Okay, but I just want to be
14 clear about what you're saying, which is I believe that you're
15 saying, well, it's de facto if you permit the structure you're
16 permitting the use; is that correct?

17 MR. BELLOW: In essence, yes.

18 COMMISSIONER MITTEN: Okay. So it's not unfair
19 of us to want to have a full understanding of both the
20 structure and the use and its impact on --

21 MR. BELLOW: Oh, sure, it's not. But, again, the
22 point though is that the use itself when viewed separately,
23 it's already allowed in the more restrictive zone.

24 COMMISSIONER MITTEN: But I guess I understood
25 you to say, but in this particular context, which is the second

1 story of a garage, it's not separate. It's very much tied to
2 the structure because the structure would not be allowed
3 without coincidentally granting the use.

4 MR. BELLOW: Well, I think the language of the
5 code is specific for a reason. If obviously the second story
6 of an accessory structure which may be granted by the Board of
7 Zoning Adjustments were to be devoted to any other type of
8 living quarter that would be non-domestic, then that would be
9 an issue for the Board of Zoning Adjustment to consider.

10 COMMISSIONER MITTEN: Okay.

11 MR. MITTEN: In such cases we call those out for
12 variances.

13 COMMISSIONER MITTEN: Okay, and let me just ask
14 you another question, and perhaps you heard the Goodmans
15 mention this, that their plan is that this would be for a
16 domestic employee, but there's the possibility that this would
17 be for a family member.

18 Under that, in that situation for a family
19 member, do you think that that would require a use variance?

20 MR. BELLOW: Absolutely.

21 COMMISSIONER MITTEN: Okay.

22 MR. BELLOW: And Mr. Goodman's application to the
23 Office was that the space was devoted solely to domestic
24 employee.

25 COMMISSIONER MITTEN: Okay. Thank you.

1 CHAIRPERSON CROSS REID: Okay. Thank you, Mr.
2 Bellow.

3 Do any other Board members have questions for Mr.
4 Bellow?

5 (No response.)

6 CHAIRPERSON CROSS REID: All right. Thank you
7 very much, Mr. Bellow.

8 MR. GOODMAN: I'd like to point out something
9 since the Commissioner pointed this out. In my -- because I
10 was aware of that ruling, as well, and the ruling on a --
11 although it was unclear about whether or not, and indeed, I
12 believe it is unclear, whether a proper use of an accessory
13 building, accessory to a single family dwelling, is for any
14 accessory use attendant to a single family dwelling.

15 The use for family living and the use for maid's
16 quarters is clearly an accessory use to a single family
17 dwelling. So if this accessory building is accessory to a
18 single family house and is being used as a proper accessory
19 use, then the code anticipates properly using it as an
20 accessory building, a domestic employee or a family, but I made
21 sure in my application, in my brief to you, and I'll point it
22 out to you, too, since I've got it, this is very important
23 because I don't want the Board to misconstrue my intention.

24 If I can find a full copy, I've just torn apart
25 these copies so many times. I would like to bring the Board's

1 attention to Footnote 11 on page 6. From the beginning, we
2 have filed an affidavit saying that this addition will be used
3 as living quarters for a domestic employee, which as Mr. Bellow
4 has just indicated is clearly a permitted use for an accessory
5 building in an R-3 district.

6 I have pointed out, and I will say this for the
7 record, that this is for a second story maid's quarters. It is
8 not for a mother-in-law suite. It is not for -- primarily
9 intended for my in-laws. It's not intended for my mother.
10 What I said here and what I mean here, it should be noted that
11 the emergency use by a family member in need of assistance is
12 only a possibility. In the event of such an emergency, owners
13 do not wish to be forced to use a nursing home if it is not
14 necessary.

15 But I also state here very plainly that should
16 emergency use by a family member require a separate
17 application, such use will not occur without a future
18 application. So I just want to be very plain about that.

19 Thank you.

20 CHAIRPERSON CROSS REID: Okay. Thank you very
21 much.

22 Any cross examination of Mr. Gross?

23 MR. GROSS: Is there a walkway from the alley to
24 the rear of the lot past the garage?

25 MR. GOODMAN: Originally there was not. We

1 purchased an extra four foot strip of ground in order to have
2 access -- for several reasons -- have access to our back yard
3 from the alleyway.

4 Another reason we're going up is because in the
5 past there have been people that have come over our eight foot
6 into our back yard. So, yes, we do have access to the alley.

7 MR. GROSS: And the passageway is four feet wide?

8 MR. GOODMAN: It's four feet wide before we plant
9 the trees, yes.

10 MR. GROSS: And is there a means for a pedestrian
11 to get to the rear yard beside the house from the street?

12 MR. GOODMAN: Yes, there is.

13 MR. GROSS: And how wide is that passageway?

14 MR. GOODMAN: You're talking about O Street,
15 right?

16 MR. GROSS: Yes.

17 MR. GOODMAN: Yeah, O Street passageway is
18 approximately seven to eight feet on one side and approximately
19 five feet on the other.

20 MR. GROSS: Okay.

21 MR. GOODMAN: Six, sorry, six.

22 MR. GROSS: Have you, in the recent period, hired
23 an architect to assess whether you can reasonably build an
24 addition to the main house?

25 MR. GOODMAN: To be honest with you, when we

1 bought the house, we bought the house with the understanding
2 that that house had been rejected for any further expansion.
3 My wife is a graduate from Pratt with a five year degree in
4 architecture, and the difficulties that I'm presenting to you
5 today are difficulties that are just so obvious and
6 overwhelming.

7 MR. GROSS: But these difficulties have not been
8 assessed by a practicing architect to determine how difficult
9 they would be to overcome?

10 MR. GOODMAN: Are you talking about with respect
11 to the structure itself?

12 MR. GROSS: To the various impediments that
13 you've cited that --

14 MR. GOODMAN: The trees?

15 MR. GROSS: The trees, the granite wall, the
16 cistern or slave tunnel, the plantings.

17 MR. GOODMAN: We would submit that these speak
18 for themselves.

19 MR. GROSS: Beginning at the rear wall of the
20 house can you describe what is on the ground proceeding south
21 toward the rear of the lot?

22 MR. GOODMAN: This is the rear wall of the lot
23 right here. This is an unusually large cherry tree. On this
24 side there are five trees that are currently being used as a
25 shield for one of our neighbors. We are not certain whether or

1 not this cistern, root cellar, slave tunnel actually connects
2 to the house or not. We know it starts somewhere very close to
3 the back porch here.

4 As I said there are 95 bushes here. The best way
5 -- and a weeping willow -- the boxwood is situated in front of
6 the garage some distance from the back of the house. The
7 trees, all of the ornamental bushes and trees, line the sides
8 of the property from the back of the house to the garage.

9 MR. GROSS: Directly behind the house is there a
10 brick patio at grade?

11 MR. GOODMAN: We installed that brick. Well, not
12 all of it. Part of it was there, and part of it was extended.

13 MR. GROSS: And approximately to what distance
14 from the house would you say that brick is installed?

15 MR. GOODMAN: That I don't know.

16 MR. GROSS: Okay.

17 MR. GOODMAN: It's not that wide.

18 MR. GROSS: Right. The -- is there one --

19 MR. GOODMAN: To give you an idea, this is a
20 three foot stair, which is up against the house, and this can't
21 be more than a foot or two that way.

22 MR. GROSS: Is there one historic boxwood or
23 more?

24 MR. GOODMAN: There's a whole garden. In the
25 rear are you talking about?

1 MR. GROSS: Whatever historic boxwoods you've
2 referred to.

3 MR. GOODMAN: The historic boxwoods, I don't know
4 how many there are, but it's an entire garden back here. It
5 would be best viewed over here. I don't know how many form
6 that group, but it's a tight group.

7 MR. GROSS: Are they primarily oriented to the
8 accessory building?

9 CHAIRPERSON CROSS REID: Mr. Gross, where are you
10 going with this line of questioning? Can you just --

11 MR. GROSS: My questioning is I understand that
12 some or all of them are adjacent to the accessory building.
13 The question becomes are they more likely to be damaged by the
14 proposed addition or a normal addition to the building.

15 CHAIRPERSON CROSS REID: Okay.

16 MR. GROSS: The main building.

17 CHAIRPERSON CROSS REID: Okay. Answer that
18 question, please, Mr. Goodman.

19 MR. GOODMAN: I'll be glad to answer it. They
20 are in front of the accessory building. Obviously nothing's
21 going to touch them during construction or they will lose their
22 hands, but they're five feet away from the building as it is.
23 The ornamental tree will have to be clipped a bit, but we can
24 still get the second story on there without destroying that
25 tree in front. It's a redbud tree.

1 MR. GROSS: You referred a few minutes ago to a
2 previous variance regarding an accessory building on this
3 alley, and referred to the Office of Planning report having
4 been in favor. Do you know what the decision of the Board of
5 Zoning Adjustment was?

6 MR. GOODMAN: Yes, I do. But I'm going to save
7 that for your cross examinations since you were in charge of
8 the Office of Planning at that time.

9 MR. GROSS: I wasn't in charge of the BZA staff
10 at the time, but --

11 CHAIRPERSON CROSS REID: Just answer the
12 question, Mr. Goodman.

13 MR. GOODMAN: Yes, absolutely.

14 CHAIRPERSON CROSS REID: Thank you.

15 MR. GROSS: The Board did deny that application?

16 MR. GOODMAN: Yes, the did.

17 MR. GROSS: That's all.

18 CHAIRPERSON CROSS REID: All right. Thank you
19 very much.

20 Further questions, Board members?

21 COMMISSIONER MITTEN: I just had a couple of
22 quick follow-up things that perhaps that could be clarified for
23 the record. Just as a follow-on to the questions that Mr.
24 Gross was asking --

25 MR. GOODMAN: Yes.

1 COMMISSIONER MITTEN: -- could you prepare for
2 us, and I don't mean, you know, anything elaborate, but a plan
3 that shows where all your existing landscaping is so that we
4 have a sense of where the boxwoods are, where the cherry tree,
5 where the cistern?

6 And I know some of your photographs give an
7 illustration, but if we could just have that on a two
8 dimensional --

9 CHAIRPERSON CROSS REID: Landscape plan.

10 COMMISSIONER MITTEN: Yes. And including the
11 granite wall that you made reference to.

12 Also, if you had some documentation of the
13 previous request by the prior property owner that was rejected
14 by the Commission on Fine Arts.

15 MR. GOODMAN: One second, ma'am. You want a
16 landscape plan and the CFA rejection of the extension?

17 COMMISSIONER MITTEN: Yes. And then I just had
18 one question to clarify a term that you've been using. You
19 make reference to the historic boxwood.

20 MR. GOODMAN: Yes.

21 COMMISSIONER MITTEN: Is that just your term for
22 something that's old or has someone, has some body declared
23 these historic?

24 MR. GOODMAN: We have not asked a body to declare
25 them historic. When we bought the property, not only was this

1 old brick walkway there, this oval shape brick walkway, but
2 these boxwoods were approximately five to six feet in height.
3 We, my wife comes from colonial Williamsburg, and all I can say
4 is there are very old boxwood. Whether or not they go back 100
5 years or they only go back 70 years, they contribute and I
6 believe OP has found they contribute significantly to the
7 historic fabric of the property.

8 COMMISSIONER MITTEN: And is there a preservation
9 easement encumbering your property?

10 MR. GOODMAN: Not yet.

11 COMMISSIONER MITTEN: I'm sorry?

12 MR. GOODMAN: No.

13 COMMISSIONER MITTEN: Okay. Thanks.

14 CHAIRPERSON CROSS REID: Okay. Thank you.

15 VICE CHAIRPERSON RENSHAW: Question.

16 MR. GOODMAN: You mean the front of my property,
17 right?

18 COMMISSIONER MITTEN: How about any part of your
19 property?

20 MR. GOODMAN: Not to my knowledge.

21 COMMISSIONER MITTEN: Okay.

22 VICE CHAIRPERSON RENSHAW: Mr. Goodman, since
23 we're talking about landscaping, if you are preparing a
24 landscaping plan for us, would you also give us some
25 information as to whether or not you can transplant those

1 boxwoods?

2 MR. GOODMAN: We tried once. We've lost four
3 trying to transplant the ones --

4 VICE CHAIRPERSON RENSCHAW: Well, just give us
5 some --

6 MR. GOODMAN: I'd be glad to.

7 VICE CHAIRPERSON RENSCHAW: -- professional
8 guidance on that if you would about --

9 MR. GOODMAN: I'd be delighted.

10 VICE CHAIRPERSON RENSCHAW: -- uprooting boxwoods.

11

12 Also, I believe it was Ms. Goodman made reference
13 at some point to this photograph, and I'm referring to what was
14 in your submission to us, and it shows the three story house, a
15 two story garage, a one story, which I gather is a garage and
16 then eight feet, which is your garage?

17 MR. GOODMAN: Yes, ma'am.

18 VICE CHAIRPERSON RENSCHAW: And would you put the
19 pointer on this? I'm showing Mr. Goodman -- that's it, and he
20 is point to the --

21 CHAIRPERSON CROSS REID: There should be an
22 attachment number on that.

23 VICE CHAIRPERSON RENSCHAW: There is not. It's
24 Mr. --

25 MR. GOODMAN: I think it's Attachment 1, isn't

1 it?

2 CHAIRPERSON CROSS REID: At the top of the page,
3 Ms. Renshaw.

4 MR. GOODMAN: Is it the back of one? Maybe it's
5 not.

6 VICE CHAIRPERSON RENSHAW: No, there's no exhibit
7 number on it, but it was included in your packet, and you have
8 pointed to it on the board so that we all can follow you, but I
9 would like to know who's the owner of the two story garage and
10 the one story garage adjacent to your property. If you would
11 just indicate that, and if on the two story garage that you
12 have referenced, is someone living in the second story?

13 MR. GOODMAN: No, they are not. Both of those
14 individuals have signed the petition that's Attachment A or
15 Attachment 1. I'm sorry. Nobody is living there in the second
16 story. Nobody is living in the first story, in the one story.
17 That's a 15 foot. I don't think anybody could because I don't
18 think the ceilings are high enough. I don't think anybody --
19 I'm not sure. Somebody probably could stand up in the second
20 story of that garage, but I am not certain. I haven't been in
21 there.

22 I have spoken to the owners. They have indicated
23 that it's not being rented. It's being used for storage and
24 for a winter green house for his plants.

25 VICE CHAIRPERSON RENSHAW: Was that added on

1 during the time that you have lived in this property, in your
2 property, or did it predate your --

3 MR. GOODMAN: My understanding is that it
4 predated my owning this property but not by much.

5 VICE CHAIRPERSON RENSHAW: Okay.

6 MEMBER LEVY: Madame Chair, I have a few quick
7 questions for Mr. Goodman.

8 Regarding the slave tunnel or the brick structure
9 in the back of the house, have you made any attempt to
10 determine whether that has any particular significance?

11 MR. GOODMAN: We've had three people look at it.
12 We've gotten down in there. It's a very unusual structure.
13 That's why we're not sure what it is. As I said it's a totally
14 enclosed brick room with a vaulted brick ceiling. There's two
15 rooms. Both of them are vaulted brick ceilings. We have not
16 dug out. We started to dig it out to see where it led, but we
17 have been so busy fixing up the house.

18 CHAIRPERSON CROSS REID: You know, just let me
19 jump in here. It sounds like a station on underground
20 railroad. And there are several here in Washington.

21 MR. GOODMAN: Really?

22 CHAIRPERSON CROSS REID: So you may want to check
23 into that, Historic Preservation. I think that Trish Boseburg
24 (phonetic) is heading up an effort to designate and to identify
25 the Afro-American historic cites here in Washington, and that

1 may very well be one of them. You can check with staff and
2 they can give you that information, who to check with, because
3 that's my suspicion that that's what that is.

4 MR. GOODMAN: Thank you. I know that we've read
5 something about O Street properties being used. St. John's
6 Church was being used for -- to shelter slaves during the war,
7 and the O Street properties were very sympathetic. We have not
8 gotten a formal archeological assessment of it.

9 CHAIRPERSON CROSS REID: It would be very
10 interesting to do so.

11 MEMBER LEVY: One other question. Regarding the
12 petition that you indicated that's in the packet that you
13 submitted.

14 MR. GOODMAN: Yes.

15 MEMBER LEVY: Which has a, I believe, 65
16 signatures in support of the revised plan.

17 MR. GOODMAN: Yes, sir.

18 MEMBER LEVY: Are these signatures of people who
19 were previously opposed or opposed to the original plan?

20 MR. GOODMAN: Some of them are. Some of them
21 aren't.

22 MEMBER LEVY: Do you have any idea approximately
23 how many?

24 MR. GOODMAN: Let me put it this way. We --

25 MS. GROSS: Just the ones that were close by.

1 The ones that were close to us who kind of cared about it, and
2 they objected to the 30 foot height, and then when we lowered
3 it to 20, they recognized that 20 was the acceptable limit set
4 by -- and they didn't object. So they reversed their decision.

5 MR. GOODMAN: We also put a map there on as
6 Attachment 9, give you an idea of the yeses. We didn't go all
7 the way -- we went in a two block radius, but we only put the
8 yeses immediately on this block.

9 MS. GROSS: And a lot of the people are -- don't
10 live there. So it's kind of hard to get them.

11 MR. GOODMAN: Like Herman Welk doesn't live
12 there.

13 MEMBER LEVY: Okay. And so Attachment 9
14 represents the people who are not in opposition after you
15 revised the plan?

16 MR. GOODMAN: Not all of them. This is just our
17 block.

18 MEMBER LEVY: On your block, right.

19 MR. GOODMAN: And behind that was the people who
20 are now opposing that were not opposed to the 31 foot
21 structure.

22 MEMBER LEVY: Okay. Thank you.

23 CHAIRPERSON CROSS REID: Okay. Thank you very
24 much.

25 We'll go now to the government --

1 MEMBER GRIFFIS: Actually, Madame Chair, one
2 quick -- sorry.

3 CHAIRPERSON CROSS REID: That's okay.

4 MEMBER GRIFFIS: The proposed development here,
5 is it entirely new construction or are you building on the
6 existing structure and adding on top?

7 MR. GOODMAN: We were going to add on top.

8 MEMBER GRIFFIS: So you're not putting in new
9 footings.

10 MS. GOODMAN: No.

11 MEMBER GRIFFIS: You're not having to do digging
12 or any sort of --

13 MS. GOODMAN: No.

14 MR. GOODMAN: Thank the Lord.

15 CHAIRPERSON CROSS REID: Okay.

16 MR. GOODMAN: Now, clearly we would have a
17 structural engineer check it out. The beams in there, by the
18 way, these are wooden -- hewn wooden beams that are like 12
19 inches wide and some very nice construction.

20 CHAIRPERSON CROSS REID: Okay. In the interest
21 of time that's whittling away right now --

22 MR. GOODMAN: Sorry.

23 CHAIRPERSON CROSS REID: -- let's move on to the
24 Office of Planning report and let's try to kind of get through
25 the rest of this fairly quickly. We do have another case this

1 afternoon.

2 MS. BROWN-ROBERTS: Good afternoon, Madame
3 Chairman and members of the Board. I'm Maxine Brown-Roberts
4 from the Office of Planning.

5 The Office of Planning report was submitted late,
6 and therefore, I request that the timing be waived and the
7 report entered into the record.

8 CHAIRPERSON CROSS REID: Okay. I have no point
9 with waving the record to allow the report to come in unless an
10 objection by any Board member. Okay.

11 MS. BROWN-ROBERTS: The original application
12 proposed a second floor addition to the existing garage for a
13 maid's quarters. This addition would increase the height of
14 the building from eight feet to 30 feet. The Applicant has
15 since revised a proposal and is now requesting to increase the
16 height of the building from eight to 20 feet and is, therefore,
17 requesting a five foot variance.

18 The subject property is within the Georgetown
19 historic district and is subject to review by the old
20 Georgetown Board and Historic Preservation Review Board.

21 The old Georgetown Board will not review the
22 application and make recommendation until the BZA has made its
23 recommendation.

24 The property is unique as it is within a
25 community developed with single family attached units and

1 apartments and is one of the only properties within the
2 immediate neighborhood that is developed with a single family
3 detached residence.

4 The house is approximately 150 years old and has
5 parking garage that's rare. Between the house and the garage
6 are a boxwood garden and other mature trees that contribute to
7 the historic character of the property.

8 In addition, the Applicant has stated that
9 there's a granite wall between the surface of the property
10 which presents an exceptional situation as it will present
11 problems with any expansion of the house.

12 In order to accommodate the maid's quarters the
13 Applicant will have to expand the existing house. However,
14 trying to expand in the existing house would be difficult due
15 to the granite wall that would have to be removed to
16 accommodate the new construction.

17 The Applicant argues that the access to the rear
18 of the site between the house and the garage is not large
19 enough to allow large equipment and machinery to cut through
20 the granite wall and allow expansion to take place.

21 Additionally, they argue that this construction
22 would destroy the boxwood garden.

23 The Applicant, therefore, feels that this
24 constitutes an exceptional practical difficulty. The Office of
25 Planning acknowledges that this situation does not meet the

1 construction of an addition, a complex venture, but such
2 complexities abound in historic neighborhoods such as
3 Georgetown, and the Office of Planning is not convinced that
4 this rises to the level of an exceptional practical difficulty.

5 The Applicant has made efforts to minimize the
6 impact of the proposal on the community, such as using a roof
7 with a less severe pitch and planting trees along the western
8 portion -- along the western property line to hide the proposed
9 expansion when viewed from adjacent properties.

10 The expansion will change the views from adjacent
11 properties, but will not block their light and air.

12 While in one respect the proposed variance
13 requests to increase the size of the garage will not in itself
14 impair the intent and purpose of the plan and the zone map
15 since there various other accessory buildings in the
16 neighborhood that are approximately of the same height as the
17 proposal.

18 On the other hand, the Office of Planning shares
19 the concern of the committee to regard the precedential effect
20 of approving a two story self-contained residence on the
21 subject property.

22 The Office of Planning agrees that this could be
23 detrimental to intent of the zone plan and has recommended that
24 if such a conversion were to be allowed, it would be permitted
25 for only five years in order to require the Applicant return to

1 demonstrate that a property is not being used as a rental
2 property. Monitoring such use conversions is difficult.

3 The Georgetown community has for many years
4 opposed the conversion of such buildings to residential space
5 for these same reasons. This application could open the door
6 and give way to the desire of other property owners to convert
7 or make additions to their garages and, in effect, increase the
8 density in the area, as well as having a detrimental effect on
9 the already adverse parking situation.

10 The Applicant has demonstrated that the property
11 is unique and that expanding on their existing house would be
12 difficult. However, we find that the Applicant has not met the
13 burden to demonstrate that adding the desired space to the main
14 house, instead of increasing the size of their garage, would
15 constitute a serious practical difficulty.

16 In addition, OP finds that having a fully self-
17 contained residence in an accessory building could be
18 detrimental to the overall intent of the zone plan.

19 We, therefore, recommend that the Board of Zoning
20 Adjustment deny the requested variance. However, if the Board
21 sees fit to approve the application, then we recommend that the
22 following conditions be added to the approval.

23 The proposed residential portion of the accessory
24 building shall not be offered as residential accommodation at
25 any time, and shall be used only as a maid's quarters and/or

1 additional sleeping space for the residents of the main house
2 or the extended family. The variance shall be for no more than
3 a period of five years.

4 Thank you, Madame Chairman.

5 CHAIRPERSON CROSS REID: Thank you very much.

6 Are there questions for the Office of Planning,
7 Board Members? Cross examination, Mr. Goodman?

8 MR. GOODMAN: Yes, I just want to correct the
9 record in a couple of respects.

10 We agree with the Office of Planning --

11 CHAIRPERSON CROSS REID: No, no. You have to --
12 if you want to cross examine at this point then direct
13 questions.

14 MR. GOODMAN: Okay. Ms. Roberts, in your report
15 on page 123, you note the rear yard is 20 feet, but did you
16 take that measurement?

17 MS. BROWN-ROBERTS: No.

18 MR. GOODMAN: Do you know precisely what the rear
19 yard is? If I tell you it's not 20 feet, do you know how long
20 it really is?

21 MS. BROWN-ROBERTS: No.

22 CHAIRPERSON CROSS REID: What page are you
23 referring to?

24 MR. GOODMAN: Third page.

25 CHAIRPERSON CROSS REID: Page three. Okay.

1 MR. GOODMAN: And the side yard notes that
2 there's zero feet side yard on one of the sides, but you know
3 we do have two side yards; right?

4 MS. BROWN-ROBERTS: This information was
5 submitted in your original application.

6 MR. GOODMAN: I think this came from the Office
7 of Zoning Administrator submitted this. We didn't

8 At any rate, we need to correct the record.
9 There are side yards on both sides.

10 CHAIRPERSON CROSS REID: You have an opportunity
11 for closing remarks. At such time you can do so.

12 MR. GOODMAN: Thank you.

13 CHAIRPERSON CROSS REID: All right. Thank you.

14 MR. GOODMAN: Let me make sure I got all of the
15 corrections.

16 CHAIRPERSON CROSS REID: All right. Now we move
17 -- okay. Then, Mr. Goodman, now we move to ANC report from the
18 ANC representative here? Okay. We have a letter from the ANC.

19 VICE CHAIRPERSON RENSHAW: We have a letter from
20 the ANC-2E, dated June the 13th, 2001, and it is signed by
21 Peter Pulsifer, the Chair of ANC-2E.

22 He states that at its June 5th, 2001 regular
23 scheduled meeting, which was duly noticed and attended by seven
24 of the eight commissioners, ANC-2E unanimously passed the
25 following resolution: that they reviewed the above-referenced

1 application.

2 Let me just drop down to their specific
3 conclusion that ANC-2E is opposed to the above-reference
4 application, and their specific reasons for opposition include
5 that it would establish -- the special variance would establish
6 a precedent that would encourage other residents of
7 Georgetown's historic alleyways to construct free standing
8 residential units.

9 ANC-2E feels such a precedent would be
10 detrimental toward the historic and residential nature of the
11 Georgetown community.

12 And of the three pronged test ANC-2E maintains
13 that the application has not met the burden of proof in
14 establishing the three pronged test under 11 DCMR 3103.2.

15 And in reference to the three pronged test, ANC-
16 2E objects to the application on the ground that the
17 application failed to show that compliance with the zoning
18 regulations would be unnecessarily burdensome, and that the
19 practical difficulties are unique to the property.

20 The ANC is sympathetic to the needs of the
21 Applicant to provide live in maid's quarters and a dwelling for
22 the Applicant's mother-in-law. Such considerations do not
23 outweigh the negative impact this application would impose upon
24 the surrounding neighbors.

25 And in reference to provision C of the three

1 pronged test, the ANC objects to the application because there
2 would be significant harm to the public good, specifically to
3 the sight lines and air circulations of the neighbors at 1317
4 and 1319 33rd Street.

5 The petition in opposition to the application
6 signed by a large number of surrounding neighbors is testimony
7 to this impact, and so its conclusion, ANC-2E is primarily
8 concerned that granting of this variance would establish a
9 precedent that threatens the current zone plan of the
10 Georgetown area, and that the Applicant failed to meet the
11 burden of the three prong test, and, therefore, 2E requests
12 that the BZA deny the application.

13 CHAIRPERSON CROSS REID: Thank you very much.

14 MR. GOODMAN: Madame Chair, could we ask Madame
15 Sansone to read other factors into the record too, because
16 that's -- she omitted that one paragraph which is very
17 important to our case.

18 CHAIRPERSON CROSS REID: She?

19 MR. GOODMAN: She skipped a paragraph that's very
20 important to our case. It's called "Other Factors."

21 Could you read that into the record, madame?

22 VICE CHAIRPERSON RENSHAW: Is this OP that you're
23 talking about?

24 MR. GOODMAN: No. ANC.

25 VICE CHAIRPERSON RENSHAW: ANC.

1 CHAIRPERSON CROSS REID: Which one? It just
2 basically -- ask Ms. Renshaw.

3 VICE CHAIRPERSON RENSHAW: I have the letter
4 right here.

5 MR. GOODMAN: Oh, I'm sorry, Ms. Renshaw. I'm
6 sorry.

7 VICE CHAIRPERSON RENSHAW: I have the letter.
8 What paragraph would you like written?

9 MR. GOODMAN: Other factors, page two, second to
10 the last paragraph.

11 VICE CHAIRPERSON RENSHAW: All right. Other
12 factors, and this is the paragraph before the conclusion that
13 the Applicant would like to have read into the record.

14 Other factors. ANC-2E feels that the application
15 would have little impact on sunlight to the surrounding
16 neighbors. ANC-2E recognizes the low land use percentage of
17 the Applicant's property. Also, ANC-2E does not believe that
18 such a project would cause parking issues since the Applicant
19 maintains five parking spaces.

20 Thus, ANC-2E does not object to the application
21 on the aforementioned grounds.

22 MR. GOODMAN: Thank you, Ms. Renshaw.

23 VICE CHAIRPERSON RENSHAW: All right.

24 CHAIRPERSON CROSS REID: Okay. Thank you very
25 much, Ms. Renshaw.

1 The ANC will certainly be given -- 2E will
2 certainly be given the great weight to which they are entitled.

3

4 Okay, now, we move to persons in support of the
5 application. Seeing no one present, nonetheless we do have a
6 petition and a few letters in support of the application that's
7 been submitted for the record.

8 MR. GOODMAN: Thank you.

9 CHAIRPERSON CROSS REID: Or the petitions that
10 they do not object to the application.

11 MR. GOODMAN: Thank you.

12 CHAIRPERSON CROSS REID: And is signed by
13 several, 65 persons.

14 All right. Now, persons in opposition, persons
15 and parties in opposition. May I see a showing of hands as to
16 how many people are going to testify? Testify.

17 (Show of hands.)

18 CHAIRPERSON CROSS REID: Okay. Mr. Gross and
19 three other people. Okay. Please come up quickly and let's
20 try to as quickly as possible get through the testimony.

21 Each person will have approximately three
22 minutes. Please don't be redundant or -- now, Mr. Goodman and
23 Ms. Goodman, you may step back.

24 Please don't be repetitive or redundant,
25 repeating the same thing over and over again. If someone has

1 already said what you wanted to say, then please don't repeat
2 that part of it. Just give us things that we have not already
3 heard before.

4 MR. GROSS: Madame Chair, as a party in
5 opposition, immediately abutting neighbors, I would request
6 somewhat more than three minutes.

7 CHAIRPERSON CROSS REID: Okay. How much time do
8 you need, Mr. Gross?

9 MR. GROSS: Ten to 15 minutes.

10 CHAIRPERSON CROSS REID: Yes, it is true as a
11 party in opposition, you should have equal time, but if you
12 would only take ten or 15 minutes I have no problem with that
13 unless other Board members have any objection.

14 MR. GROSS: My written statement is being handed
15 out --

16 CHAIRPERSON CROSS REID: Okay.

17 MR. GROSS: -- now, which should help the Board.

18
19 I had also requested in my original indication
20 that I would be appearing, request for expert status in zoning
21 and land use planning together with a summary resume.

22 CHAIRPERSON CROSS REID: All right.

23 MR. GROSS: Has the Board looked at that at all?

24 CHAIRPERSON CROSS REID: Well, I think that most
25 of us are familiar with your background, Mr. Gross. And I have

1 no problem with accepting him as an expert witness, having been
2 familiar with this work prior to today.

3 Any objections?

4 MR. GOODMAN: I do.

5 CHAIRPERSON CROSS REID: All right.

6 MR. GOODMAN: His proffer was --

7 CHAIRPERSON CROSS REID: Let's put it on the mic
8 please.

9 MR. GOODMAN: I do object to him proffering
10 expert testimony. One, it has never been done prior to today.
11 So he's basically just ambushing us.

12 Secondly --

13 CHAIRPERSON CROSS REID: What's never been done
14 prior to today?

15 MR. GOODMAN: He's never proffered his expert
16 testimony. He's doing it for the first time on the record now.
17 So we have no notice of what he intends to testify to.

18 MR. GROSS: Just an hour ago I provided Mr.
19 Goodman a copy of what I submitted.

20 MR. GOODMAN: We asked him an hour ago for what
21 he was going to submit. He first refused to give it to us.
22 Then he gave it to us. He gave it to my wife, but prior to
23 that we have no way of preparing for this expert testimony.

24 CHAIRPERSON CROSS REID: Ms. Sansone, could you
25 please weigh in on this?

1 It is my recollection that persons who wish to
2 speak as expert witnesses submit their resume or we are already
3 familiar with them and we make that decision. And is it
4 predicated upon him having to have provided the Applicant with
5 his testimony prior to the hearing today?

6 I'm just not familiar with that.

7 MS. SANSONE: Madame Chair, I need to just
8 quickly check the rules of procedure. I'm not recalling
9 anything off the top of my head that requires that to be done.

10 CHAIRPERSON CROSS REID: Right.

11 MS. SANSONE: But I do want to check our rules to
12 see if there's any kind of deadline.

13 CHAIRPERSON CROSS REID: Well, Mr. Goodman, thank
14 you very much.

15 Mr. Gross, could we take you out of sequence
16 while Ms. Sansone researches a bit whether or not this issue --

17 MR. GROSS: Sure. My understanding is there's no
18 advance submission requirement.

19 CHAIRPERSON CROSS REID: Right. I think that --

20 MR. GROSS: She's going to check.

21 CHAIRPERSON CROSS REID: Just to be on the safe
22 side, we want to make sure that we're proceeding correctly. So
23 can we move to one of the other witnesses --

24 MR. GROSS: Sure.

25 CHAIRPERSON CROSS REID: -- to speak please, and

1 then come back? Okay.

2 MR. VOGT: I'm Tom Vogt, and I'm the homeowner at
3 3258 O Street.

4 There was mention of the signatures garnered by
5 the Goodmans. Approximately 15 of those signatures were
6 submitted by students who are living in rental apartments there
7 while attending the university and are there for one or two
8 semesters, and as such they don't have a vested interest in the
9 neighborhood as the owners would.

10 And I think that those should be -- those
11 signatures should be discarded. And no longer reside there
12 either. They've graduated and gone off.

13 Furthermore, some of the signatures that are on
14 the Goodmans' list have since submitted letters signed in
15 opposition to the proposal because they weren't sure what they
16 were signing originally with the Goodmans, and I think we've
17 submitted almost 40 letters signed in opposition to this
18 proposal.

19 CHAIRPERSON CROSS REID: Okay.

20 MR. VOGT: The Goodmans state that they have no
21 intention of ever renting this apartment, and though I take
22 them at their word for that, there's certainly no guarantee
23 that circumstances may not change in the future or that they
24 may decide to sell their home and the next purchaser to come in
25 will decide to make use of those apartments.

1 The foliage screen that they mention and have a
2 picture of there, I think we also have a picture that I'd like
3 to draw to your attention. There was --

4 CHAIRPERSON CROSS REID: Staff -- have you
5 submitted it?

6 MR. VOGT: It was submitted yesterday I
7 understand.

8 CHAIRPERSON CROSS REID: All right. Would your --

9
10 MR. VOGT: To my knowledge, it's a large color 11
11 by 18 -- yes, that is it. I'm sorry.

12 CHAIRPERSON CROSS REID: We just don't have it in
13 color.

14 MR. GOODMAN: Madame Chair, while we look at
15 that, can I just get a quick clarification?

16 This is an individual testifying?

17 CHAIRPERSON CROSS REID: This is individual
18 testifying.

19 MR. VOGT: Yes.

20 MR. GOODMAN: Having three minutes on the time?

21 CHAIRPERSON CROSS REID: Yeah, three minutes on
22 the time. Mr. Gross is a party, and others are testifying as
23 individuals.

24 MR. VOGT: That foliage screen sits on a shelf
25 approximately five feet off the ground. If those -- and Mr.

1 Goodman admitted that, but I think that if those plants were,
2 indeed, put in the ground there would no longer be a privacy
3 screen. They wouldn't even come up to the top of the existing
4 stockade fence there.

5 In terms of the historic garden, I question the
6 word "historic" in the context that they use it. That garden
7 has been greatly altered by the Goodmans since they moved in,
8 and Mrs. Goodman is very talented and works tirelessly around
9 the house, but they have added and taken away a lot of the
10 plantings that were in there. And they have also severely cut
11 back on the cherry trees in the past year.

12 There are, in addition, there are no three story
13 garages on the alley, and there are no occupied apartments in
14 any of those on our alley at all.

15 The Goodmans state that there was a light and air
16 survey done, but I'd like to know what -- Mrs. Goodman did it
17 and I'd like to know what her qualifications were to conduct
18 that and to submit it as an official statement.

19 The root cellar that's mentioned in the backyard
20 or a possible slave tunnel, we have the same one in our
21 basement, and it was discovered earlier in the year when we
22 replaced the furnace, and it was determined to be simply a root
23 cellar. It's surrounded by bricks. It's maybe four feet in
24 diameter, four and a half feet in diameter, and I've seen the
25 Goodmans, and I have not gone into it, but I've seen it from

1 their yard, and it appears to be the same as what we have.

2 CHAIRPERSON CROSS REID: Okay.

3 MR. VOGT: The only other thing is that it's my
4 understanding, and I think that you have copies of three of the
5 city councilmen's letters that urge the denial of this
6 application today, Councilman Evans -- oh, four, Councilman
7 Evans, Councilman Cotania, Brazil and --

8 COMMISSIONER MITTEN: We don't have Evans and do
9 we have Brazil?

10 We don't have Evans.

11 (Pause in proceedings.)

12 MR. VOGT: Thank you.

13 Oh, I should say something about how our view
14 would be affected. The Goodmans put in -- they replaced a
15 weeping willow tree that -- on their property earlier this year
16 that overlooks ours as well. During six months of the year
17 there are leaves on it and, you know, what we would be seeing
18 of this structure would be relatively well hidden, but there's
19 another five months our of the year that there are no leaves on
20 the trees and it would be -- we would be completely exposed to
21 it or these people would be looking in or us or we would be
22 looking there.

23 And we've also been told that it would affect all
24 of our property values to have rental units in back.

25 CHAIRPERSON CROSS REID: Thank you very much.

1 MR. VOGT: Thank you.

2 MR. MITCHELL: My name is Alan Mitchell. I live
3 at 1301 33rd Street, N.W., which is on the south side of the
4 alley in question.

5 I, too, would like to point out that, although
6 Mr. Goodman would have us believe that there is wide support in
7 the community for this variance application, in fact, that
8 seems not to be the case. The petition that they circulated
9 was not a petition of support. It was -- it stated that the
10 people who signed did not object, which is something quite
11 different.

12 Secondly, I would like also to note that although
13 Mr. Goodman calls attention to other garages in the immediate
14 vicinity with second stories, these are not inhabited and, in
15 fact, the precedent case that was denied by the BZA some years
16 ago was specifically denied on the grounds that it had not met
17 the important three prong test.

18 In addition to what has already been mentioned,
19 those of us who are concerned residential crowding and public
20 safety issues are concerned that the construction of these
21 apartments with kitchens, in particular, supplies of fuel,
22 natural gas, electricity, and the like would pose further fire
23 hazard of public safety hazard in the alley in question, and
24 certainly along any other alleys where people might wish to
25 develop such properties.

1 It's important to note too that although the
2 Goodmans claim the uniqueness of their property in the alley in
3 question, the question of the precedential -- the negative
4 precedential value of such a granting of a variance extends
5 beyond the alley, and you will be familiar with a letter that I
6 wrote to the Board of Zoning Adjustment on April 24th in which
7 I specifically mentioned that my concerns were not only for the
8 alley in question, the alley between 33rd Street and Potomac
9 Street, but rather for the other alleys in the immediate
10 neighborhood where people might wish to develop their
11 properties along these lines.

12 It should also be noted that the question of
13 congestion and parking then extends beyond just that immediate
14 space. It extends to the wider neighborhood. And even though
15 the Goodmans promise us that they will provide five parking
16 spaces, the fact of the matter is that right now they have a
17 garage that supposedly can handle four parking spaces and yet I
18 believe only one parking space is used, and they park the other
19 cars on the street. So I don't see that that's necessarily a
20 guarantee that parking will not be detrimentally affected.

21 If, indeed, as Mr. Goodman suggests, there is so
22 much support in the neighborhood for this project, I would
23 simply ask you to reflect for a moment on the record and why is
24 it that the ANC was unanimously opposed to this project? The
25 Georgetown Citizens Association, who was represented at the ANC

1 meeting by Barbara Tsartman, was opposed to this project. Four
2 city councilmen are on record as being opposed to this project.

3 The Office of Planning is opposed to this project. Numerous
4 neighbors; there's two petitions that have been circulated with
5 more than 70 signatures are opposed to this project --

6 CHAIRPERSON CROSS REID: Thank you.

7 MR. VOGT: And I respectfully submit that you
8 join that opposition.

9 Thank you.

10 CHAIRPERSON CROSS REID: Thank you very much.
11 Okay.

12 MS. CARTER: I'm Mary Carter, and I live at 1317
13 33rd Street.

14 I rented this house beginning in December 1995
15 and after four years of very happy living there bought it.
16 It's a light filled house. It's on the alley as you can see by
17 the pictures. It's a perfect place for my retirement home.

18 My porch -- there's a little porch and I don't
19 know whether any of these pictures show it or not -- yes, right
20 there -- extends out 12 feet from the house, and if this
21 building were allowed to be constructed, it would only be about
22 15 feet from my porch. So it would seriously impact the beauty
23 and the comfort of my home.

24 Thank you.

25 CHAIRPERSON CROSS REID: Thank you very much.

1 Ms. Sansone, did you have a --

2 MS. SANSONE: Yes, Madame Chair. I reviewed our
3 rules of procedure, and I did not find any specific provisions
4 that would require parties or persons in opposition to submit
5 that material in advance by a certain date.

6 However, out of fairness to the Applicant, I
7 mean, we do have to be concerned about making sure the
8 Applicant has a fair opportunity to cross examine Mr. Gross and
9 respond to any materials or rebut any materials he presents.
10 So we may have to make some accommodation for Mr. Goodman in
11 his closing statement or perhaps the ability to put in a
12 written response later.

13 But there's nothing specifically in the rules
14 that would preclude the Board from considering whether to
15 recognize Mr. Gross as an expert or to receive his report.

16 CHAIRPERSON CROSS REID: Well, wouldn't Mr.
17 Goodman have the opportunity to cross examine Mr. Gross on his
18 testimony?

19 MS. SANSONE: Yes, Madame Chairman. I'm just
20 concerned that Mr. Goodman's opportunity to cross examine be
21 fair, that he have the opportunity to understand the substance
22 of Mr. Gross' testimony and fairly cross examine and respond to
23 it.

24 CHAIRPERSON CROSS REID: Okay. If there's
25 anything that is lacking here today, then he could request that

1 in writing from Mr. Gross.

2 All right. With that having been said, I have no
3 problem with accepting Mr. Gross as an expert witness unless
4 there is an objections from any of the other Board members. Do
5 you wish to take a vote on it?

6 BOARD MEMBERS: No.

7 CHAIRPERSON CROSS REID: Okay, all right. Thank
8 you very much, Mr. Gross.

9 MR. GROSS: Were you through commenting, Dr.
10 Carter?

11 MS. CARTER: Yes. Thank you.

12 CHAIRPERSON CROSS REID: Some time ago.

13 MR. GROSS: Okay. I want to just walk through
14 the submission I just made. And the comments were organized
15 under the three pronged test, and Section 1 there beginning
16 toward the bottom of page 1, exceptional and unique conditions,
17 practical difficulty.

18 The regulations refer on this, refer to
19 exceptional narrowness, shallowness or shape of a specific
20 piece of property or exceptional topographical conditions or
21 other exceptional conditions.

22 So I'll just walk through a few of these. The
23 subject lot is actually wider than a typical lot. It's
24 approximately level. It's rectangular in shape, has a
25 relatively low lot occupancy as Applicant has emphasized and

1 accordingly has ample room for expansion of the house.

2 In short, by just pointing to the fact that the
3 lot is somewhat larger than is typical in the R-3 zone, that's
4 just a case that the lot is somewhat different than the typical
5 lot, although there are detached houses sprinkled around
6 Georgetown, and some of them in adjacent blocks, quite a few of
7 them.

8 But the regulations don't require a showing that
9 a lot is just different. It has to be subject to practical
10 difficulties for development under the subject zone district,
11 and actually in the R-3 zone property has more options than one
12 of your typical smaller houses attached, semi-detached,
13 whatever on a smaller lot.

14 Applicant also pointed out that a number of the
15 houses on this -- in this square probably do exceed the
16 permitted lot occupancy, while all of those houses would have
17 to get a variance to get a normal addition.

18 Subject property apparently has many options, and
19 under cross examination a few minutes ago, of course,
20 Applicant indicated that he has not hired a professional
21 architect to look at the options for an addition to the main
22 dwelling that might overcome the alleged obstacles that he has
23 pointed out.

24 On the specific alleged exceptional conditions,
25 some discussion has been made about the landscaping and so

1 forth. My main comment here is that I was shocked after
2 reading the statement of the Applicant from a second story
3 vantage point of one of my clients to see the actual situation
4 of the yard. I was expecting to see dense plantings
5 immediately behind the house that would all have to be cut. I
6 was prepared to feel bad about it.

7 But what I saw was this substantial brick patio
8 level right behind the house nearly the width of the house if
9 not the whole width, and extending approximately 17 feet deep.

10 It does have a single moderate sized tree growing through it
11 that the brick goes around, but it's not exactly unusual for
12 someone to have to cut down a tree to build an addition.

13 And then actually continuing south from the patio
14 is just a regular lawn on virtually level ground. The
15 plantings tend to be oriented toward the side of the lot. I
16 could not see all of those, but I would imagine that, you know,
17 a significant addition could be build without even getting back
18 to the grass.

19 Archeological -- the questions on that have
20 already been raised either by the Board or by the neighbor who
21 has some knowledge about it.

22 We of course raise the question of whether there
23 is any official historic status of either the cistern, root
24 cellar or whatever it is or the plantings.

25 In summary, we believe that the Applicant has not

1 shown the existence of exceptional conditions or practical
2 difficulties required under zoning for d the granting to him of
3 a variance.

4 I forgot to comment on the earth moving
5 equipment. This again relates to the question of an architect
6 and the questions I was asking about the walkways. There is an
7 eight foot side yard accessible to the street in front and a
8 four foot walkway from the alley.

9 I don't presume to be an architect or to design
10 an addition, but it's known that people can carry lumber for an
11 addition through a wood frame drawing and situate it that way,
12 and likewise footings, and architects can come up with various
13 things and sometimes they're combinations of rearranging space
14 inside the house together with add-ons of various shapes,
15 dimensions and so on.

16 We're just saying there seems to be more
17 flexibility here, and maybe even without the need for earth
18 moving equipment. We don't know that. We're just saying
19 there's a test to be made and the burden of proof is on the
20 Applicant to provide evidence.

21 We've combined comments on substantial adverse
22 effect on neighboring property and impairment of the intent and
23 integrity of the zone plan.

24 The first part of this focuses on the intent and
25 the integrity of the zone plan. The proposition here is that

1 the proposed use and second story addition even without a
2 height variance is allowed in, and is more appropriate for
3 properties in the R-1 zones than for properties in more
4 intensive zone districts.

5 And I want to have the Board, if you would, look
6 at the first attachment, which is the third to the last page,
7 Exhibit A.

8 This is the relevant portion of the miscellaneous
9 provisions of the zoning regulations that existed just prior to
10 codification into DCMR format. And if we look at 7601.3 there,
11 that is the regulation that later became the one that
12 authorizes the proposed use in this case.

13 So it starts out, "An accessory building in any
14 district shall not exceed one story or 15 feet in height except
15 in an R-1-A or R-1-B district. An accessory private garage may
16 have a second story use for sleeping or living quarters of
17 domestic employees of the family occupying the main building."
18

19 And then you get into question of whether, and
20 this was discussed earlier. I don't want to dwell on
21 procedural points too much, but since this is not in the R-1
22 use provisions, but is free standing along with other
23 miscellaneous provisions that address various geographic areas,
24 zone districts, stripping of clay, soil, and a whole bunch of
25 other things, whether this really was intended to be a

1 carryover.

2 We are simply addressing the area variance
3 question because that was the Zoning Administrator's second
4 opinion. But it's certainly arguable.

5 An interesting provision here that I hadn't
6 noticed, frankly, until reading this while waiting to come up
7 is the sentence beginning on the middle. "Any such two story
8 accessory building shall not exceed 20 feet in height and shall
9 not be located within the required rear yard."

10 Now, the current regulations on accessory
11 buildings state that the accessory building cannot occupy more
12 than 30 percent of the required rear yard, and that was when I
13 came to the table and I was going to comment factually when Mr.
14 Goodman was talking about knocking down the garage and
15 rebuilding.

16 If it were rebuilt, this garage which occupies,
17 just eyeballing it, 80 or 90 percent of the required rear yard
18 area, could not occupy more than 30 percent, and actually I
19 faxed to the Board yesterday a memorandum arguing that an
20 additional variance in this regard was required.

21 I didn't bring it up under preliminary matters.
22 I want to submit it in a minute, but it goes like this. In the
23 nonconformity provisions, there's a prohibition against
24 extending a nonconforming feature of a nonconforming structure.

25

1 In this case we have a nonconforming structure
2 that occupies much more than 30 percent of the required rear
3 yard area, and it's being extended vertically, which if you
4 consider the purpose of lot occupancy regulations generally is
5 the worst thing you can do especially for my clients'
6 properties facing directly.

7 If the garage were conforming to the current
8 regulations, it would be normally more removed and smaller in
9 size or it would be pushed more toward the main dwelling in
10 order to occupy only 30 percent of the required rear yard area.

11 And what I was pointing to the second part of
12 this may not have been that last sentence I read -- it's a moot
13 issue here -- may not have been picked up in DCMR at all, but
14 this is the memorandum I faxed yesterday. So it was just last
15 minute. But I'll put it into the record for the Board's
16 consideration later.

17 Now, more on the intent and integrity of the zone
18 plan. It's very understandable, starting on page 3, bottom of
19 page 3, why the Zoning Commission in 1958 would have said that
20 this use should be restricted only to the R-1-A and R-1-B
21 zones, and there's a series of bullets there beginning at the
22 bottom.

23 Large lot size. Okay. That's been brought up by
24 the Applicant.

25 Low lot occupancy, 40 percent, so that typically

1 houses might be more removed from the addition to the garage
2 then they would be in an R-3 zone.

3 The side yard requirement of eight feet so you
4 have more separation there as against a zone where there's no
5 side yard requirement and attached houses are allowed.

6 Rear yard requirement of 25 feet versus 20 feet,
7 and this is highly significant. Minimum lot width requirement
8 of 75 feet in R-1-A and 50 feet in R-1-B.

9 So in the R-1 zones the general area standards
10 have the effect of removing an addition to a garage much
11 further away from the typical house on nearby lots than when
12 you have an oversized lot in an R-3 zone in a dense historic
13 district.

14 Lot width especially, if this were an R-1-B zone
15 with all of the lots or nearly all of them, 5,000 square feet,
16 and Dr. Carter's house was around the corner, the situation
17 would probably be much better regarding light, air, and
18 privacy.

19 I'm talking about the zone plan here in general,
20 and the zoning is dealing with typical situations and minimum
21 standards.

22 Just a factual point. Applicant seems to believe
23 that the subject lot would be conforming in an R-1-B. Actually
24 at 36 feet in width it's nonconforming as to lot width, and if
25 it were a full R-1-B lot 50 feet in width, perhaps the garage

1 would be located a little farther away from the properties
2 facing from the side.

3 I want to then turn to the question of adverse
4 effects, and if you would look at the photograph, the blowup I
5 handed out a minute ago, this was submitted by my clients early
6 in the case at a smaller size, and this is just a blowup. So
7 this is already in the record, but in the foreground there, you
8 can see Dr. Carter's railing of her rear deck, which has, you
9 know, a table, umbrella, and chairs there, and then only 12 to
10 14 feet back is her wood fence at her rear yard, and then
11 immediately beyond that you have the black roof of the garage
12 that would have the proposed addition.

13 So the lines on here were there previously from
14 the original. The 31 feet shows how dramatic that would have
15 been.

16 But two or three comments. One is that given the
17 close proximity, and we are in historic district with a lot of
18 non-conforming lots, and this lot is extremely shallow at the
19 rear. And so this addition is virtually in Dr. Carter's face,
20 and even if it's only a five foot variance, it's, in my
21 opinion, detrimental in terms of the light and air, and
22 possibly noise.

23 I mean, the Goodmans have said that there
24 wouldn't be a window on this side. That's perhaps good, but
25 the person inside may like music or any number of other things,

1 too. You never know.

2 Also, the view, for example, of the Victorian
3 building down the alley would be obstructed, but also observe
4 that the lower garage structures on the alley, if this variance
5 is granted, might be encouraged to also apply, take advantage
6 of this type of flexibility.

7 Final comment on that. I believe the larger
8 garages that are already there are nonconforming, pre-1958
9 structures.

10 So based on all of those factors, Madame Chair,
11 members of the Board, we recommend denial of the requested
12 variance or variances. It is clear that no exceptional or
13 extraordinary condition of the property exists that creates a
14 practical difficulty for the owner.

15 The requested variances derive not from the
16 property itself, but from personal desires or needs of the
17 Applicant.

18 Moreover, the variance, if approved, would be
19 contrary to the intent, purpose, and integrity of the zone plan
20 and would adversely affect the use and enjoyment of neighboring
21 properties.

22 That concludes my testimony.

23 CHAIRPERSON CROSS REID: Thank you very much.

24 Board members, questions of Mr. Gross?

25 MR. VOGT: Madame Chair, may I add one other

1 thing, please?

2 CHAIRPERSON CROSS REID: Not really.

3 MR. VOGT: All right. Let's see. Mr. Goodman,
4 any cross examination of these witnesses?

5 MR. GOODMAN: I do.

6 CHAIRPERSON CROSS REID: Okay, all right. Can
7 you -- let's see. We have the seats up there. Which one will
8 you not be cross examining?

9 Who will you cross examine?

10 MR. GOODMAN: I'd like to cross -- I mean if I
11 have a right to cross examine, I'd like to do it all. I'd like
12 to start with Mr. Gross if that's okay.

13 CHAIRPERSON CROSS REID: Okay. Then could I ask
14 one of you to just sit back for a moment? Okay.

15 MR. GOODMAN: Thank you, Madame Chairman. Sorry
16 to take up all of your time like this. I know you're tired.
17 We all are.

18 Mr. Gross, when did you start working for OP? In
19 1981? What month?

20 MR. GROSS: I started working for a predecessor
21 agency in the District of Columbia in late 1971.

22 MR. GOODMAN: In 1981 were you working at the
23 Office of --

24 MR. GROSS: I was working at the Office of
25 Planning, yes.

1 MR. GOODMAN: Your resume said that you were in
2 charge of all of these variances that go before the BZA. Is
3 that true?

4 MR. GROSS: During a certain period I was Chief
5 of Zoning Services, and then later I was Chief of Comprehensive
6 Plan Implementation.

7 MR. GOODMAN: Did that apply in July of 1981?

8 MR. GROSS: July of 1981, you may be right that
9 the BZA report on that case may have come under my
10 jurisdiction.

11 MR. GOODMAN: Okay. Thank you.

12 I wanted to establish that first.

13 Secondly, is it also true that you did not do a
14 site visit to my property? That's true, is it not?

15 MR. GROSS: That's true.

16 MR. GOODMAN: So you do not know how long the
17 rear yard is on my property, do you?

18 MR. GROSS: It's -- it's on the Zoning
19 Administrator's computation sheet attached to the application,
20 of which I have a copy.

21 MR. GOODMAN: All right. So your testimony is
22 based solely on that document; is that correct?

23 MR. GROSS: Well, that and on other normal
24 observations from points of public view and client's property.

25 MR. GOODMAN: Okay. Would you be surprised to

1 know that our rear yard is 90 feet from the back of our house
2 to our property line?

3 MR. GROSS: What is this dimension again?

4 MR. GOODMAN: Ninety feet from the back of our
5 house to the back of our property line.

6 MR. GROSS: You mean would I be surprised that
7 that's how far it is?

8 MR. GOODMAN: That that is the rear yard
9 dimension of the back of our property.

10 MR. GROSS: Okay. That's -- you're talking about
11 physical, not a rear yard requirement. Well, it wouldn't
12 surprise me since the lot is 150 feet deep. It's a very deep
13 lot.

14 MR. GOODMAN: Okay. So you based your excess of
15 30 percent of the rear yard on a 20 foot rear yard; is that
16 correct?

17 MR. GROSS: No. The regulation I was citing
18 basically says that beginning with the adoption of these zoning
19 regulations in 1958, a new accessory building can occupy no
20 more than 30 percent of the required rear yard area. The rear
21 yard requirement in R-3 is 20 feet.

22 MR. GOODMAN: Right.

23 MR. GROSS: So your garage could not be
24 constructed as a new building. That's what I'm saying.

25 MR. GOODMAN: Okay, but you know we're not

1 constructing a new building.

2 MR. GROSS: I do know that.

3 MR. GOODMAN: Okay. Do you know that our rear
4 yard exceeds 20 feet?

5 MR. GROSS: The regulation is talking about the
6 required rear yard area.

7 MR. GOODMAN: Let me just ask you a question.
8 How did you get in excess of 30 feet because my computations
9 show 22 percent of the rear yard would be taken up by this
10 structure. So I want to know how you got in excess of 30 feet
11 -- 30 percent.

12 MR. GROSS: Thirty percent you mean. Okay. From
13 looking at the Sanborn Real Property Atlas and other maps, it
14 seems apparent.

15 MR. GOODMAN: Is that your Attachment B?

16 MR. GROSS: That is a blowup of it.

17 MR. GOODMAN: Okay. So you concluded from
18 Attachment B that the hatched area represented more than 30
19 percent of the rear yard.

20 MR. GROSS: Yes.

21 MR. GOODMAN: Okay. Would you dispute the fact
22 that it's 22 percent of the rear yard?

23 MR. GROSS: I certainly would.

24 MR. GOODMAN: Okay. Do you have any basis to
25 dispute that, or what basis do you dispute it?

1 MR. GROSS: Visual observation of that map. If
2 you measure 20 feet back, if you just look at the fact that
3 your lot is 36 feet wide and apply that width coming back from
4 the alley, if you have a survey, go ahead and submit it.

5 MR. GOODMAN: I'd like to submit this into the
6 record, I think.

7 You say nothing more than a visual observation.
8 There is no measurements on this. So you're just guessing
9 basically.

10 MR. GROSS: The measurements are on the Zoning
11 Administrator's computation sheet.

12 MR. GOODMAN: Okay, but the Zoning Administrator
13 has already testified that she did not do that. That was a
14 mistake.

15 MR. GROSS: That has nothing to do with the
16 dimensions of the lot. I'm saying there was an attachment to
17 your application form in which the width of the side yards, the
18 depth of the lot, the width of the lot was stated, and so if
19 you look at this map with the garage drawn on it and then use
20 the dimensions from the Zoning Administrator's computation
21 sheet, you reach certain conclusions. That's what I did.

22 MR. GOODMAN: Okay. I'd like to just make sure
23 the record reflects that there is a rear yard of 90 feet. The
24 total gross --

25 CHAIRPERSON CROSS REID: Mr. Goodman, that you

1 can do in your closing remarks, but, but right now the other
2 questions you have for Mr. Goodman, could you please wrap so
3 that we could --

4 MR. GOODMAN: Okay.

5 MR. GROSS: I think there's a misunderstanding
6 here on Mr. Goodman's part. The rear yard requirement is
7 measured back from the alley a distance of 20 feet, is reserved
8 as the rear yard requirement. That's what the 30 percent
9 cannot exceed, is that land area.

10 MR. GOODMAN: Well, if that's -- since this came
11 up one day prior to trial and he's explained it for the first
12 time here at trial, I would ask that we be permitted to file a
13 brief.

14 MR. GROSS: That's fair.

15 CHAIRPERSON CROSS REID: Sure.

16 MR. GOODMAN: On the other issue, you were, as
17 you said, you were in charge of the BZA services at a time when
18 OP recommended that a second story to an accessory building on
19 this very alley across the alley from where I live should be
20 approved by the BZA. Is that true?

21 MR. GROSS: That's right.

22 MR. GOODMAN: Okay. In that case, I would like -
23 - is it also true that the reasons that the practical
24 difficulties that the owner submitted was that they did not
25 want to chop up a house of beautiful federal proportions?

1 For bringing the case, that was the only
2 practical difficulty cited.

3 MR. GROSS: Well, they didn't win the case.
4 Maybe we were wrong, yeah.

5 MR. GOODMAN: But you thought it was a sufficient
6 practical difficulty at that time to warrant --

7 MR. GROSS: Well --

8 MR. GOODMAN: -- a variance?

9 MR. GROSS: You have to realize that this was a
10 period of time when the Board of Zoning was just extremely busy
11 and so was the Zoning Commission, and I relied primarily on
12 staff persons.

13 I did review and edit each report, but it's not
14 as if on every BZA case, of which there are many, I, you know,
15 got into great detail.

16 MR. GOODMAN: The reason I ask is it couldn't be
17 more close related to the current application. It is the exact
18 same --

19 CHAIRPERSON CROSS REID: Are you testifying, Mr.
20 Goodman?

21 MR. GOODMAN: I will later. Thank you, Your
22 Honor.

23 The other issue, I believe you said it was
24 practical difficulty. You did not have a visual inspection of
25 the property. So your practical difficulty is a surmise?

1 MR. GROSS: Not at all. I said you didn't -- you
2 haven't even hired an architect to assess the possibility.
3 That's what I said, and I also said that from an adjacent
4 property on the second floor, I could clearly see and I was
5 shocked to see, despite your description, that the lot is level
6 and has a brick patio behind the house followed by a level
7 lawn, and that your statement that the boxwoods were directly
8 behind the house would make one think that they were going to
9 be right smack behind the house instead of 60 or 80 feet away.

10 MR. GOODMAN: Do you want to cite specifically
11 what you're referring to? Because --

12 MR. GROSS: It's in your statement of June 25th.

13 MR. GOODMAN: I know what it says.

14 MR. GROSS: In two places.

15 MR. GOODMAN: I know what it says. It doesn't
16 say that.

17 MR. GROSS: I don't have it in front of me.

18 MR. GOODMAN: Okay. I just made two points. I'd
19 like to make sure both of which are -- so you're taking this
20 from a visual inspection next door. You believe we have
21 ultimate flexibility in the use of this historic structure to
22 build out into this yard. This is your professional opinion
23 that we have unlimited flexibility to build out our historic
24 structure into our backyard. Is that your testimony?

25 MR. GROSS: My professional opinion is that you

1 have not hired an architect to assess whether you can do --

2 MR. GOODMAN: Well, that's a fact.

3 MR. GROSS: -- a reasonable

4 MR. GOODMAN: It's not an opinion. It's either
5 fact or it isn't. Now, it's your opinion --

6 MR. GROSS: but it's part of your burden of
7 proof.

8 MR. GOODMAN: I know, but that's --

9 MR. GROSS: To show that you can't --

10 CHAIRPERSON CROSS REID: Mr. Gross, just answer,
11 please. Let's not get into a back and forth. Just yes or no.

12 MR. GOODMAN: Yes or no? Is it your professional
13 opinion --

14 MR. GROSS: No.

15 MR. GOODMAN: -- that I can extend the back of
16 that house in an unlimited fashion?

17 MR. GROSS: I have not made that statement. The
18 answer is no.

19 CHAIRPERSON CROSS REID: Okay.

20 MR. GOODMAN: Thank you.

21 CHAIRPERSON CROSS REID: All right. Is that it?

22 MR. GOODMAN: No further questions.

23 CHAIRPERSON CROSS REID: Thank you very much.

24 All right. Now --

25 MR. GOODMAN: No, just for that, for that

1 witness.

2 CHAIRPERSON CROSS REID: For Mr. Gross? Okay.

3 All right.

4 MR. GOODMAN: Thank you, Mr. Gross.

5 Tom, thank you for taking off work today. I do
6 appreciate it. On the number of people that you testified in
7 opposition -- in support, I believe it was your statement 15
8 were students. I'm not aware of how many were students, and
9 some no longer resided in the neighborhood. That was also true
10 of the petition in opposition, is it not?

11 MR. VOGT: No, no. The people, everyone who --

12 MR. GOODMAN: Excuse me. Not students. Renters.

13 MR. VOGT: Everyone who signed the letter in
14 opposition are homeowners.

15 MR. MITCHELL: No, they're long-term renters who
16 are still living in the neighborhood.

17 CHAIRPERSON CROSS REID: The question is directed
18 to this witness.

19 MR. MITCHELL: I'm sorry.

20 MR. GOODMAN: The implication you made is that
21 these people who were students or renters -- I believe they're
22 renters, are they not?

23 MR. VOGT: Right.

24 MR. GOODMAN: Okay. Had no vested interest in
25 the neighborhood.

1 MR. VOGT: Correct.

2 MR. GOODMAN: As renters. I was asking you
3 whether or not there were renters, are they not?

4 MR. VOGT: Right.

5 MR. GOODMAN: Had no vested interest in the
6 neighborhood.

7 MR. VOGT: Correct.

8 MR. GOODMAN: As renters. I was asking you
9 whether or not there were renters on your petition in
10 opposition.

11 MR. VOGT: No.

12 MR. GOODMAN: There are no renters on your --

13 MR. VOGT: No.

14 CHAIRPERSON CROSS REID: He answered that
15 question.

16 MR. GOODMAN: Thank you.

17 MR. VOGT: No.

18 MR. GOODMAN: Next one, please.

19 MR. VOGT: That wouldn't be fair.

20 MR. GOODMAN: Okay. Well, okay. You have no
21 evidence that we have no intention to rent, right? I mean we
22 have no intention to use this property as we say we would. We
23 have not --

24 MR. VOGT: That's correct.

25 MR. GOODMAN: Your concern is what would happen

1 if we moved away; is that correct?

2 MR. VOGT: Or if you change your mind next month.

3 MR. GOODMAN: Or I change my mind and the
4 application didn't have a qualification on it. If you moved
5 out of your property or you changed your mind, would you have a
6 right to rent your property?

7 MR. VOGT: My home? Yes.

8 MR. GOODMAN: And if you sold it, the person who
9 bought it could do the same thing, right?

10 MR. VOGT: Yes.

11 MR. GOODMAN: The foliage is not installed, Your
12 Honor. We admitted to that and for good purpose.

13 CHAIRPERSON CROSS REID: Is that a question?

14 MR. GOODMAN: What was the implication? The
15 foliage, you mentioned the foliage as not being installed.

16 MR. VOGT: Right. It's on a five foot shelf,
17 that if you did install it, it would not even come up to the
18 top of the stockade fence.

19 MR. GOODMAN: Oh, that's right.

20 MR. VOGT: There's no privacy. I doubt that
21 anything would even grow there because it's only four feet
22 wide, and I don't think it's going to get enough light.

23 MR. GOODMAN: Well, that I don't know. But if we
24 installed a planter above ground, there's no problem with that,
25 is there?

1 MR. VOGT: I can't --

2 MR. GOODMAN: To your knowledge?

3 MR. VOGT: I can't answer that.

4 MR. GOODMAN: You visited our root cellar. You
5 saw one half of it; is that correct?

6 MR. VOGT: I saw what was exposed at the time,
7 yes.

8 MR. GOODMAN: It was only one half of it though,
9 right?

10 MR. VOGT: I don't know

11 MR. GOODMAN: Okay. No further questions, Your
12 Honor.

13 CHAIRPERSON CROSS REID: Thank you.

14 MR. GOODMAN: Thank you.

15 CHAIRPERSON CROSS REID: Next witness.

16 MR. GOODMAN: Mr. Mitchell, you've submitted
17 various protests in reference to this document. You are a
18 renter; is that correct?

19 MR. MITCHELL: Yes.

20 MR. GOODMAN: Everyone in your building was a
21 renter; is that correct?

22 MR. MITCHELL: Yes.

23 MR. GOODMAN: They all signed the petition in
24 opposition, did they not, or most of them?

25 MR. MITCHELL: I don't know how many of them

1 signed the petition in opposition.

2 MR. GOODMAN: You did.

3 MR. MITCHELL: I did, yes.

4 MR. GOODMAN: As a renter?

5 MR. MITCHELL: As a long-term renter.

6 MR. GOODMAN: Right.

7 MR. MITCHELL: Yeah.

8 MR. GOODMAN: And your letter to the BZA was
9 primarily because of density issues, public safety issues; is
10 that correct?

11 MR. MITCHELL: And parking issues, yeah.

12 MR. GOODMAN: If this proceeding went -- if this
13 went through and it was checked by the city, I believe you told
14 me this personally. If every expert in the city has to approve
15 this for compliance with public safety and density and all of
16 this sort of stuff aside from the variance, I assume that would
17 meet your issues, would it not?

18 MR. MITCHELL: If it confirmed to the fire code,
19 certainly.

20 MR. GOODMAN: I have no further questions, Your
21 Honor.

22 CHAIRPERSON CROSS REID: Thank you.

23 Any other questions of the --

24 MR. GOODMAN: Ms. Carter.

25 CHAIRPERSON CROSS REID: Dr. Carter?

1 MR. GOODMAN: Yeah. And this will be quick.

2 Dr. Carter, thank you for coming here today. I
3 appreciate your coming down here.

4 You recently bought this property, did you not?

5 DR. CARTER: Two years ago, June of two years
6 ago.

7 MR. GOODMAN: But you lived there for how long?

8 DR. CARTER: Four years prior to that.

9 MR. GOODMAN: Four years prior. Was the parking
10 space that's currently there there when you started renting the
11 property?

12 DR. CARTER: You mean the car park?

13 MR. GOODMAN: Yeah.

14 DR. CARTER: Of course. It's been there since
15 1940 -- 1952 or before.

16 MR. GOODMAN: 1952?

17 DR. CARTER: Or before, un-huh.

18 MR. GOODMAN: Was there a tree in your backyard?

19 DR. CARTER: No.

20 MR. GOODMAN: When you started?

21 DR. CARTER: Oh, there was a holly tree that was
22 taken down because it was diseased.

23 MR. GOODMAN: Also, you authored the protest
24 letter in opposition to this?

25 DR. CARTER: Un-huh.

1 MR. GOODMAN: Was that your --

2 DR. CARTER: Yes.

3 MR. GOODMAN: And you characterized it as a three
4 story, multiple rental unit dwelling?

5 PARTICIPANT: No, you did not.

6 DR. CARTER: Just a moment. For the lay person
7 it was three stories. When I came down here with my daughter,
8 they explained to us that the BZA does not consider the under
9 the sloping roof to be a story, but it was a 14 foot space. So
10 it may be that as a layperson I wasn't speaking in your
11 language, but for me that 14 foot space, part of the 31 foot
12 building, was significant.

13 PARTICIPANT: It didn't say that. Can you read
14 specifically what the petition --

15 CHAIRPERSON CROSS REID: Ma'am. She has to
16 respond.

17 DR. CARTER: If Mr. Goodman has a copy, I have --

18 MR. GOODMAN: Yes, I have a copy.

19 DR. CARTER: If you'd let me go back, I have a
20 copy.

21 CHAIRPERSON CROSS REID: No, wait one second.

22 MR. GOODMAN: I have a copy.

23 CHAIRPERSON CROSS REID: You can respond to his
24 question, and if you have something to give her, that's okay,
25 but you cannot talk to him.

1 DR. CARTER: May I go back and get the copy of
2 the petition?

3 CHAIRPERSON CROSS REID: Sure.

4 DR. CARTER: Thank you.

5 (Pause in proceedings.)

6 CHAIRPERSON CROSS REID: Okay. All right.

7 MR. GOODMAN: I'll make it as quick as I can,
8 Your Honor.

9 Paragraph 1 under "General Public Policy Reason
10 that Should Prohibit the Proposed Building."

11 CHAIRPERSON CROSS REID: Wait, wait, wait.

12 MR. GOODMAN: I just wanted to clarify.

13 DR. CARTER: May I answer the question that was
14 given to me, please?

15 CHAIRPERSON CROSS REID: Wait one second because
16 there's an issue regarding whether this is the instant
17 application or the modification.

18 MR. GOODMAN: It's the original application.
19 It's not relevant to the modified application. The only
20 relevance --

21 COMMISSIONER MITTEN: Do we really need to go
22 into it?

23 MR. GOODMAN: The only relevance is that this
24 galvanized the neighborhood, both the description and
25 subsequent conduct. I just want to clarify the conduct and the

1 description.

2 Does it state that to erect a three story
3 accessory building that would have one or more future rental
4 units? Is that how it was described in Paragraph 2?

5 DR. CARTER: I don't know what you're referring
6 to. The petition that I circulated when I --

7 MR. GOODMAN: No, no. Your letter in opposition.
8 I'm not at the petition yet. Your letter in opposition that
9 was submitted on April 5th, circulated to the neighborhood and
10 signed by 50 neighbors.

11 DR. CARTER: This was never circulated to the
12 neighbors. The only thing that was circulated to the neighbors
13 was the first petition, which is in the record, and with all
14 the drawings, and I explained to the neighbors that nobody had
15 seen these plans of the Goodmans.

16 I came down here and Xeroxed the whole file and
17 took the pictures, the plans and everything back to show the
18 neighbors because we simply didn't know what the proposal was.

19 CHAIRPERSON CROSS REID: Okay.

20 MR. GOODMAN: So it is your testimony that you
21 never described this to any of the neighbors as a three story,
22 multiple rental unit property?

23 DR. CARTER: I just explained. This is what the
24 petition, the first petition said. "We, the undersigned,
25 oppose the" --

1 MR. GOODMAN: Wait a minute, wait a minute, wait
2 a minute.

3 DR. CARTER: May I please read this?

4 "We, the undersigned," oppose the application of
5 the Goodmans, 3254 O Street, to construct a self-sustaining
6 unit or units and/or rental unit or units where their existing
7 garage is. We believe this would establish a dangerous
8 precedent on the alley or pedestrian walkway and auto
9 throughway where historically no self-sustaining unit has been
10 permitted."

11 That's all it said.

12 MR. GOODMAN: The question I asked you is whether
13 or not you made any verbal representations to the neighbors
14 when you went around for their signatures.

15 DR. CARTER: I showed the neighbors the pictures,
16 the plans that the Goodmans had submitted. There was a 31 foot
17 building, and you've seen the original plans. The original
18 garage was eight foot, two inches if I'm not mistaken.

19 CHAIRPERSON CROSS REID: Okay. The answer is no.

20 MR. GOODMAN: Is the answer yes or no?

21 CHAIRPERSON CROSS REID: Is the answer yes or no?
22 Did you --

23 DR. CARTER: In my layman's terminology that was
24 a third floor, yes.

25 MR. GOODMAN: So you did describe it to neighbors

1 as a three story, multiple rental unit dwelling.

2 DR. CARTER: I described it as a three story
3 building, yes.

4 MR. GOODMAN: Thank you.

5 Did you ever ask any of the neighbors also
6 directly to recant their signatures?

7 DR. CARTER: Absolutely. Some of them --

8 MR. GOODMAN: Wait a minute. Just -- that's all
9 I asked.

10 DR. CARTER: Well, I'd like to explain that,
11 please. Some of the people on the alley had been shown an
12 original drawing that was passed by the Fine Arts Commission,
13 the Goodmans' original picture, which I believe is in the
14 record, from the Fine Arts, and they had agreed that it was all
15 right.

16 The -- the -- yes, it only went to 15 feet. The
17 new plans, which I got down here in your record, was this 31 --
18 30.6 foot building, and these people were outraged.

19 CHAIRPERSON CROSS REID: Okay.

20 DR. CARTER: They had never seen it.

21 CHAIRPERSON CROSS REID: Okay.

22 MR. GOODMAN: Wait a minute. I want to get to
23 this point, too. This is important.

24 It is your testimony that you assumed that these
25 neighbors never saw the 30 foot building; is that correct?

1 DR. CARTER: It is correct. They had not.

2 MR. GOODMAN: That is your assumption.

3 DR. CARTER: They had not. That's not my
4 assumption. That's knowledge.

5 MR. GOODMAN: Okay, but you were not --

6 DR. CARTER: That's a fact.

7 MR. GOODMAN: But you were not there, right?

8 DR. CARTER: Excuse me?

9 MR. GOODMAN: You were not there when that
10 presentation was made. This is --

11 DR. CARTER: When the original presentation was
12 made?

13 MR. GOODMAN: From my -- when they originally
14 signed, you were nowhere present, were you?

15 DR. CARTER: They described to me the building
16 they saw.

17 MR. GOODMAN: But the answer to the question, yes
18 or no?

19 DR. CARTER: No, I wasn't there. Of course not.

20 MR. GOODMAN: So you assumed they had not seen
21 it; is that correct? When they signed, you assumed they did
22 not see the original application.

23 DR. CARTER: The 31 foot building?

24 MR. GOODMAN: Yes.

25 DR. CARTER: They -- they were -- they were very

1 emphatic that they hadn't seen it.

2 MR. GOODMAN: Okay, but it is your assumption; is
3 that correct?

4 CHAIRPERSON CROSS REID: Okay. She's answered
5 the question three times, Mr. Goodman. Move on, please.

6 MR. GOODMAN: And is it true you are a landlord;
7 is that correct?

8 DR. CARTER: No, it is not.

9 MR. GOODMAN: You do not have a renter living in
10 your --

11 DR. CARTER: I had a broken hip a year and a half
12 ago.

13 CHAIRPERSON CROSS REID: The answer -- the answer
14 --

15 DR. CARTER: I am not a landlord.

16 CHAIRPERSON CROSS REID: Thank you.

17 Next question.

18 MR. GOODMAN: And you do not have a renter in
19 your property?

20 DR. CARTER: I have a young medical student that
21 is not there now that was there to help me when I was (pause) -
22 -

23 MR. GOODMAN: Thank you. I have no further
24 questions.

25 CHAIRPERSON CROSS REID: Okay. Thank you very

1 much.

2 MR. GROSS: Madame Chair, may I ask one question
3 on redirect?

4 CHAIRPERSON CROSS REID: I think he has to give
5 his closing remarks, but then I think that you may ask a
6 question on redirect.

7 Ask it now? Okay. Go ahead.

8 MR. GROSS: Dr. Carter, when I visited your house
9 on Saturday and the subject of the rumor that you previously
10 had come up, did I explain anything about the zoning
11 regulations in that regard?

12 DR. CARTER: I don't remember. I was a little
13 excited.

14 MR. GROSS: Okay, sure.

15 CHAIRPERSON CROSS REID: Is that it?

16 MR. GROSS: Do you know what the answer was?
17 Anyway you probably already know.

18 CHAIRPERSON CROSS REID: Thank you.

19 MR. GROSS: One or two rumors is a matter of
20 right use in the R-1 zone, in the R-3.

21 MR. GOODMAN: Say that again.

22 MR. GROSS: Either one or two rumors is a matter
23 of right use in a single family residential zone.

24 MR. GOODMAN: One or two rumors is --

25 CHAIRPERSON CROSS REID: It's a good thing we

1 have closing remarks.

2 MR. GOODMAN: Thank you, Your Honor.

3 CHAIRPERSON CROSS REID: Thank you very much, Mr.
4 Gross.

5 MR. GOODMAN: I don't know where to start because
6 they're all over the map here. I did not get any of the --

7 CHAIRPERSON CROSS REID: Mr. Gross (sic), usually
8 with the closing remarks -- Mr. Gross -- I'm sorry. Mr.
9 Goodman, with the closing remarks, just basically a simple
10 statement or two, and then request for relief.

11 MR. GOODMAN: Okay.

12 CHAIRPERSON CROSS REID: I'm moving that he did
13 have -- he did have -- I think he had one issue or two issues
14 that you wanted to rebut. You can do that in your closing
15 remarks, but I did not -- I did not want you to go into a long
16 dissertation --

17 MR. GOODMAN: Okay.

18 CHAIRPERSON CROSS REID: -- for your closing
19 remarks.

20 MR. GOODMAN: I think I'd like to introduce -- I
21 mean, the reason this has become so political is because
22 originally the neighborhood got very upset thinking there was
23 going to be a three story, multiple rental unit property on
24 that -- on our -- on our lot, and rightfully so. I mean, if
25 somebody came to me with that, I would have felt very

1 uncomfortable also. Indeed, I wouldn't have built a three
2 story, multiple rental unit property.

3 My wife can testify to whether or not, in fact,
4 Ms. Carter's statements are true, that these drawings were
5 switched. We had a number of these people who are showing up
6 here against saw these drawings and approved them at a 31 foot
7 height. So we're suggesting that there's more to this than
8 strictly what's been put in the record here.

9 Just a yes or no statement. When you went and
10 got the signatures that are part of Attachment 9 on the
11 original petition for a 31 foot height variance -- excuse me --
12 a 15 foot height variance to 31 feet, did you show them the
13 original drawings that we have submitted into the record here
14 today?

15 MS. GOODMAN: The 15 foot height that Mary Carter
16 thinks that I took around to the N Street neighbors I did not
17 take to them. They did not see it. I submitted it for concept
18 only, and therefore, I was not going to waste my time if the
19 concept was rejected by taking it to all of the neighbors, and
20 they're hard to track down.

21 So they never saw the 15 foot height. Later
22 after I started working full time, I realized I could not
23 manage everything by myself, and I needed live-in assistance.

24 I went up to the 31 --

25 MR. GOODMAN: Wait a minute.

1 MS. GOODMAN: -- foot height, and that's --

2 MR. GOODMAN: That's -- you have to answer the question.

3 The question here is whether or not the people who signed the
4 original petition saw the 31 foot height.

5 MS. GOODMAN: The 31 foot height is the one they
6 all signed an approval of.

7 MR. GOODMAN: I just wanted to make that point
8 clear for the record, Your Honor.

9 MS. GOODMAN: I think if you check the dates, if
10 you check the dates and you look at the city record a little
11 bit more carefully, you will find that the neighbors never saw
12 -- you weren't there and you didn't see it.

13 MR. GOODMAN: Wait a minute, Ann. Stop, stop.

14 You can see this has gotten a little --

15 MS. GOODMAN: This is the issue.

16 MR. GOODMAN: Please.

17 MS. GOODMAN: Sorry.

18 MR. GOODMAN: Okay. I just wanted her to clarify
19 that one point in the record.

20 Intent to rent -- by the way, when Ms. Carter
21 went to the city, and she's testified -- and then she's put in
22 the record that she did, she would have also seen the affidavit
23 we had on file that indicated that there has never been an
24 intent to rent this property.

25 So describing it as a multiple rental unit

1 property was erroneous from the beginning.

2 Secondly -- thirdly, I'd like to submit that this
3 is her current view. Ms. Carter's current view is this. It is
4 a dilapidated, eight foot ceiling, leaking roof of an eight
5 foot garage. We're talking about taking this garage to this
6 height right here. It requires a five foot variance for a
7 second story that would be permitted as a matter of right on
8 any lot this size located one mile away.

9 CHAIRPERSON CROSS REID: In a different zone.

10 MR. GOODMAN: In a different zone, correct, one
11 mile away in the D.C. area.

12 CHAIRPERSON CROSS REID: Okay.

13 MR. GOODMAN: Under the D.C. code, it would be
14 permitted as a matter of right.

15 The density problems are real, but I would submit
16 this is our lot of our here, and our lot alleviates the density
17 requirements in this area. We're one third as dense as any of
18 the neighboring properties.

19 In terms of the rear yard, the rear yard, as you
20 will see from the boundaries, is 90 feet. We have a total --
21 this structure right here currently occupies 22 percent of the
22 rear yard. That's the yard from the back of the house to the
23 back of the lot. It is nonconforming, but we have added four
24 feet to our side yard, which makes it 40 feet in width, which
25 is the most amount of property we could possibly get into

1 there.

2 In terms of the other testimony here, behind the
3 house, in terms of practical difficulty, this brick right here
4 which has been hand placed on the dirt has nothing to do with
5 the practical difficulties that go under the brick, which are
6 subsurface difficulties.

7 This cherry tree is much closer than 18 feet to
8 the house. It is very close to the house.

9 This is the sunlight currently enjoyed by the
10 neighbor. This is the protruding structure she's talking
11 about. It is correct. These are not planted. Our first
12 option was to plant them in a planter that was off the ground
13 so that they could get foliage height. They're supposed to
14 grow very quickly. We are dedicated to providing a foliage
15 cover for our neighbors.

16 Aside from this weeping willow, there are holly
17 trees and other green vegetation that are year round vegetation
18 that hide this structure.

19 In terms of the fire and all of that other
20 density, we would submit that the city is going to address
21 every one of those issues, and there's a separate department on
22 every one of those issues.

23 In terms of the council members, the council
24 members have never seen the property. Their letters have been,
25 I thought, prewritten by some of the opposing parties here.

1 (Laughter.)

2 MS. GOODMAN: I spoke to Jack Evans' office
3 because his letter states that he reviewed the documentation.
4 I said, "What documentation?"

5 He -- and they agreed that they had only seen the
6 opposing documentation.

7 I also asked if they had -- and they also
8 referred to a number of signatures. I said, "Was that about 50
9 signatures?"

10 And she said yes, and I said, "The 50 signatures
11 was not for the 20 foot height. It was for the 30 foot
12 height."

13 She looked again at her paper, and she said,
14 "Oh." So --

15 MR. GOODMAN: And the ANC, too.

16 MS. GOODMAN: And then she said, "Well, we just
17 rubber stamp whatever the ANC and the other stuff is just a
18 matter if they opposed it, we opposed it."

19 CHAIRPERSON CROSS REID: Order. You cannot
20 respond, please, and I'd like you to try to keep the extraneous
21 comments to a minimum so we can get through this case.

22 MR. GOODMAN: I think that that's gotten all of
23 our points in, Your Honor.

24 CHAIRPERSON CROSS REID: All right.

25 MR. GOODMAN: I appreciate your time, and I'm

1 sorry it's taken so long.

2 CHAIRPERSON CROSS REID: Thank you very much.

3 All right. Board members, do you have any
4 questions, comments?

5 COMMISSIONER MITTEN: Madame Chair, if I could, I
6 think, if I'm clear, the practical difficulty in this case that
7 you are presenting to us is the fact that you want to have
8 living quarters for a domestic employee in your home.

9 MR. GOODMAN: Well, the practical difficulties
10 under the code are different than just practical difficulties
11 to me. They have to be practical difficulties that run -- that
12 are inherent in the property itself.

13 I've got extreme hardship and other things I
14 haven't put in this record because, frankly, if I'm entitled to
15 the use as a matter of right, I don't have to prove extreme
16 hardship.

17 But the practical difficulties that run with the
18 land are --

19 COMMISSIONER MITTEN: Now I'm not talking about
20 exceptional conditions. I'm talking about the practical
21 difficulties that cause you to want this, that cause you to
22 need this.

23 MR. GOODMAN: We have -- our house, as I said, is
24 a 2,300 square foot house, a 5,500 square foot lot. We have no
25 room in that house today for a full-time additional adult to

1 live in that property.

2 COMMISSIONER MITTEN: Okay, and that's where I
3 was going.

4 MR. GOODMAN: Yes.

5 COMMISSIONER MITTEN: Which is Mr. Gross raised
6 the point, and we've had questions about this in other cases,
7 where we're really presented only a segment of the property,
8 and we really need to have a full understanding of the
9 property, is if you could provide us floor plans for your house
10 so that we could have some understanding of your representation
11 that there is no room.

12 CHAIRPERSON CROSS REID: And the practical
13 difficulty goes to --

14 MR. GOODMAN: Now, the second --

15 CHAIRPERSON CROSS REID: What is the practical
16 difficulty? In this instance also undue hardship that cause
17 you not to be able to comply with the existing zoning
18 regulations, and that is the basis as to why you need zoning
19 relief.

20 MR. GOODMAN: Right. The only way we could
21 accommodate additional living space in this was to build this
22 property out, this main house out, or to go up and ask for a
23 five foot variance on this garage. Those are the two ways to
24 add space.

25 CHAIRPERSON CROSS REID: Okay. So --

1 MR. GOODMAN: We're saying that this is not only
2 practically difficult. We're saying it's legally impossible.

3 CHAIRPERSON CROSS REID: Okay, but Ms. Mitten --

4 MR. GOODMAN: And this is --

5 CHAIRPERSON CROSS REID: Wait, wait, wait. Ms.
6 Mitten has asked you for a floor plan of your house.

7 MR. GOODMAN: Not a problem.

8 CHAIRPERSON CROSS REID: So --

9 MR. GOODMAN: Not a problem.

10 CHAIRPERSON CROSS REID: -- if we could have it
11 for our deliberations.

12 MR. GOODMAN: I have the appraisal with me. I
13 have the appraisal with me that demonstrates it's 2,300 square
14 feet of habitable space. We have a basement, a bedroom in the
15 basement that is less than four feet above grade. We have most
16 of the rest of it is storage, most of the rest of it. We have
17 a utility room downstairs.

18 CHAIRPERSON CROSS REID: You have the appraisal
19 today --

20 MR. GOODMAN: Yes, ma'am.

21 CHAIRPERSON CROSS REID: -- that has the floor
22 plan for each level?

23 MR. GOODMAN: I don't have a floor plan. It just
24 has the recitation of the square footage.

25 CHAIRPERSON CROSS REID: I think what she's

1 asking for, Ms. Mitten, is typically a floor plan.

2 MR. GOODMAN: Well, we can get you a floor plan.

3 COMMISSIONER MITTEN: A floor plan for each
4 level.

5 MR. GOODMAN: That's fine.

6 CHAIRPERSON CROSS REID: Okay. All right then.
7 Thank you very much. That then will conclude this case.

8 MR. GOODMAN: Okay. I have a period of time
9 after this to submit the things that have been requested?

10 CHAIRPERSON CROSS REID: Yes, before our -- we
11 will have our decision meeting on this case on what date, Mr.
12 Hart? I guess in September?

13 MR. HART: September the 4th

14 CHAIRPERSON CROSS REID: September the 4th. Now,
15 prior to that time, there are several things that have been
16 requested, and I think that you have requested also for Mr.
17 Gross -- his submission so that you could respond to it.

18 MR. GOODMAN: Right.

19 CHAIRPERSON CROSS REID: So, Mr. Hart, could you
20 just reiterate for everyone what, in fact, was needed here?

21 MR. GOODMAN: Since I'm leaving town, can I have
22 a period of time after the 10th of August to submit all of this
23 material?

24 CHAIRPERSON CROSS REID: Mr. Hart will give you a
25 time line, and we'll see how it -- huh?

1 (The Board conferred.)

2 MR. GOODMAN: Ms. Mitten, just to be clear, you
3 want a landscape -- let me just make sure I get everything.

4 CHAIRPERSON CROSS REID: I think Ms. Renshaw
5 asked for that, the landscape plan.

6 COMMISSIONER MITTEN: It was me.

7 VICE CHAIRPERSON RENSHAW: I asked for
8 information about the boxwoods.

9 CHAIRPERSON CROSS REID: That would be included
10 in the --

11 VICE CHAIRPERSON RENSHAW: In the landscape.

12 CHAIRPERSON CROSS REID: In the existing
13 landscape plan.

14 MR. GOODMAN: Boxwood, replanting.

15 VICE CHAIRPERSON RENSHAW: Replanting if that can
16 be done.

17 MR. GOODMAN: And you would like a floor plan and
18 a landscape plan, right?

19 COMMISSIONER MITTEN: Right, and the landscape
20 plan should include the location of the granite wall, which I
21 understand might not be visible from the --

22 MR. GOODMAN: And we may not know the full extent
23 of that because only uncovered a piece of it.

24 COMMISSIONER MITTEN: Okay. And then also you
25 had made mention of an attempt by a prior owner to expand the

1 building that was rejected by the --

2 MR. GOODMAN: Yes, CFA rejection.

3 COMMISSIONER MITTEN: -- Commission of Fine Arts.

4 MR. GOODMAN: Expansion. We will have to find
5 that because it was way before our occupancy.

6 Yes, ma'am.

7 VICE CHAIRPERSON RENSHAW: And I have another
8 request. Mr. Gross talked about the possibility of adding onto
9 the back of your house, and he mentioned about people carrying
10 lumber since you had made a point about not being able to get
11 machinery back there, and I wondered if you could ask a
12 suitable person, a contractor what it would cost for someone to
13 carry lumber.

14 I mean if you had to add an addition to the back
15 of your house and you cannot get machinery back there, is it
16 going to be a substantial increase in cost for people to carry
17 lumber. If you would ask.

18 MR. GOODMAN: I have not a problem doing that.
19 The earth moving issue was laying the foundation down here.

20 VICE CHAIRPERSON RENSHAW: Oh, right in there.
21 Understood.

22 MEMBER GRIFFIS: Ms. Renshaw, maybe you can give
23 me a quick clarification of how that would assist us in making
24 the judgment --

25 VICE CHAIRPERSON RENSHAW: Because we are going

1 to --

2 MEMBER GRIFFIS: -- in this project.

3 VICE CHAIRPERSON RENSHAW: We are going to be
4 asked or, well, Mr. Goodman is giving us information about
5 adding onto the back of his house.

6 MR. GOODMAN: Is there anything else that I can
7 supply?

8 CHAIRPERSON CROSS REID: Fine. Let me understand
9 it, Ms. Renshaw. You want him to give you information on
10 lumber costs?

11 VICE CHAIRPERSON RENSHAW: Yes.

12 MS. GOODMAN: Lumber could be carried back. I
13 don't think that's a problem.

14 VICE CHAIRPERSON RENSHAW: If it's not a big
15 problem, if you don't see it's a problem --

16 MR. GOODMAN: I think you can carry it.

17 MS. GOODMAN: There's a tree that would block the
18 eight foot -- in the front of the house there's a weeping
19 cherry tree. I think it's in the picture.

20 CHAIRPERSON CROSS REID: Okay. I think all of
21 the Board members -- I mean, I think, just so we can be clear -
22 -

23 MR. GOODMAN: We're going to give you as much
24 information as we can.

25 CHAIRPERSON CROSS REID: -- as to what the

1 objective of that particular question. What do you want to
2 ascertain with that?

3 VICE CHAIRPERSON RENSHAW: I wanted -- because
4 Mr. Gross brought up the point of the people being able to or
5 contractors being able to carry lumber into the back because he
6 said the Applicant has not shown practical difficulty regarding
7 the earth moving equipment. You can always if you can't do
8 that, you can carry the lumber into the back.

9 Now, there is a cost to physically carrying
10 lumber versus having earth moving equipment, and I am just
11 wanting to know if a contractor could assess the cost factor in
12 this if you are adding onto the back of your house, if you can
13 get that information.

14 COMMISSIONER MITTEN: Ms. Renshaw, if I can just
15 clarify, I think there's a nonsequitur here, which is the issue
16 is not getting the materials into the yard. It's actually
17 digging up the ground.

18 MS. GOODMAN: Right, yeah.

19 VICE CHAIRPERSON RENSHAW: I understand that, Ms.
20 Mitten.

21 MS. GOODMAN: And there's a tree on that side
22 yard, the eight foot side yard, that would prohibit equipment
23 from -- he suggested we had an eight foot side yard. We could
24 take it through the side yard.

25 We'd have to cut the tree down in the front of

1 the house. There's a cherry tree that's directly in front of
2 the house, and it wouldn't fit between that cherry tree. We
3 don't have eight feet clearance.

4 MR. GOODMAN: It's not a full eight foot
5 clearance. We can supply you with all of that additional
6 information.

7 MS. GOODMAN: On the landscape plan.

8 MR. GOODMAN: It's going to take us a little time
9 though, subsequent to August 10th to get all of this material
10 done. And when is the drop dead date for your decision date of
11 September 4th?

12 MR. HART: Let me start off by telling you the
13 transcript for this hearing would be around August the 1st.
14 The first submission, first set of submissions, I would like
15 them in here around August the 13th.

16 MR. GOODMAN: Say that again. I'm sorry.

17 MR. HART: August the 13th. The transcript for
18 this case, for this application will be available to the public
19 approximately August 1.

20 MR. GOODMAN: Okay.

21 MR. HART: The first submissions, I would like
22 them in here August 13th.

23 MR. GOODMAN: Could you give me like two or three
24 additional days since I will be getting back on the 12th from
25 my holiday? That will be my first business day back in the

1 office. Monday is the 12th, is it not?

2 MR. HART: No, the 13th is a Monday.

3 MR. GOODMAN: Okay. Well, that will be my first
4 day back.

5 MR. HART: Well, we could work with the middle of
6 that week at the very best, the 15th.

7 MR. GOODMAN: The 15th.

8 MR. HART: Of August. Yes?

9 MR. GOODMAN: Okay.

10 MR. HART: August 15th. There will be responses.

11 That has to be August the 27th, which will be a Monday.

12 MR. GOODMAN: Responses to my submission?

13 MR. HART: Yes, and the decision will be
14 September the 4th.

15 Let's make sure we all have it together. First
16 set of submissions from you will be August the 15th. Where
17 necessary, the responses will be August the 27th.

18 MR. GOODMAN: Can you give me the 17th so they
19 get ten days to respond?

20 MR. HART: No, let's stop this somewhere now.

21 MR. GOODMAN: Okay.

22 MR. HART: You know, I can actually back it up to
23 August the 12th. So you know, you're pushing it further and
24 further and closer and closer to the 4th. The Board has got to
25 get time to look at your submission.

1 MR. GOODMAN: That's okay.

2 MR. HART: So the 15th is, I think, a reasonable
3 date.

4 All right. The 27th for response to your
5 submissions, and the decision will be September the 4th.

6 MR. GOODMAN: If you want to push the responses
7 up, I'll get a chance to rebut them.

8 MR. HART: First, let me ask: is that acceptable
9 to everybody?

10 Okay. There is an alternative, depending on
11 time. See, I'm working on a time sensitive trying to get you
12 guys in and out of here for a variety of reasons. However, if
13 there's a problem with that, you know, we can move it on to
14 October, October, I think, the 2nd.

15 MR. GOODMAN: You can move it to October, sir.

16 MR. GROSS: Madame Chair, I would just ask if the
17 record is open for opponents to submit additional information
18 also, provided we --

19 CHAIRPERSON CROSS REID: Until the record --
20 until the hearing -- I'm sorry.

21 MR. GROSS: Okay. We're not limited to --

22 CHAIRPERSON CROSS REID: The --

23 MR. GROSS: -- specified requests then.

24 CHAIRPERSON CROSS REID: Just as long as the time
25 line will allow you the additional time you need to be able to

1 response.

2 MR. GROSS: Right.

3 CHAIRPERSON CROSS REID: And so that by the time
4 that the actual business meeting, we'll have everything we need
5 in to make our decision.

6 MR. GROSS: Sure. Thank you.

7 CHAIRPERSON CROSS REID: Okay.

8 MR. HART: So are we in agreement for the
9 September 4th?

10 MR. GOODMAN: I would like to have a chance to
11 respond to any information that's put into the record. That's
12 my only concern.

13 CHAIRPERSON CROSS REID: Well --

14 MR. HART: Yes. I gave some time for that.

15 MR. GOODMAN: Well, I have two days when I get
16 back to file all of the requests from the Commission. They get
17 12 days to respond to that request, and I get no rebuttal.

18 MR. HART: No, not necessarily. You have with
19 about two weeks from now you can get the transcript. As a
20 matter of fact, you can respond tomorrow if you want to. So in
21 actuality you have time from now --

22 MR. GOODMAN: Okay, but what I'm saying, to
23 respond --

24 MR. HART: -- through July to August.

25 MR. GOODMAN: -- to respond to their -- to their

1 submissions, I need a few days to respond to their submissions
2 if it's contrary to the information I'm putting into the
3 record.

4 MS. BAILEY: Mr. Goodman, did you say October
5 would be more -- a decision date in October would be more
6 appropriate for you?

7 MR. GOODMAN: That's fine. That's fine. As long
8 as I get a chance to document the record properly.

9 MR. HART: Actually, you know, October in terms
10 of time for the staff, which is where, you know, the work is
11 really --

12 MR. GOODMAN: Okay. So literally I'm running out
13 the door to try to get on holiday, and I get two days from
14 when I get back.

15 MR. HART: Okay. Well, what about -- all right.
16 Let's -- you know, let's -- is October 22nd?

17 MR. GOODMAN: Do you have any problem --

18 MR. HART: Or October 2nd.

19 CHAIRPERSON CROSS REID: Is there any problem
20 with that, Mr. Gross, or any of the persons in opposition or
21 parties in opposition?

22 MR. GOODMAN: I have no --

23 CHAIRPERSON CROSS REID: Mr. Gross, it's okay?

24 MR. GROSS: Yes.

25 CHAIRPERSON CROSS REID: All right. Then that's

1 fine.

2 MR. GOODMAN: Could you give me a few --

3 MR. HART: Well, let's work back from October.

4 MR. GOODMAN: Okay.

5 MR. HART: We'll start all over again.

6 MR. GOODMAN: I'm sorry.

7 MR. HART: Working back from October 2nd, that's
8 the date of the decision. Now, we're more flexible. So I
9 would move back two weeks from October 2nd to October the 18th
10 -- sorry -- September 18th.

11 MR. GOODMAN: September 18th?

12 MR. HART: Un-huh.

13 MR. GOODMAN: Is what?

14 CHAIRPERSON CROSS REID: Okay. Now --

15 MR. HART: September 18th is a --

16 CHAIRPERSON CROSS REID: One second.

17 MR. HART: -- Tuesday.

18 CHAIRPERSON CROSS REID: One second, Mr. Hart.

19 MR. HART: Sure.

20 CHAIRPERSON CROSS REID: Why don't we do this?
21 Why don't we allow you time to get with staff and work out the
22 dates, time lines and what have you, and then in the meantime
23 what we're going to do, given the lateness of the evening now,
24 we're going to take a break for about 15 minutes, and we will
25 then assess the situation for this evening and then come back

1 and we'll make a decision as to what we're going to do and how
2 we're going to do it, if it's all right with everyone.

3 MR. GOODMAN: And this case?

4 MR. HART: Excuse me, Madame Chair.

5 CHAIRPERSON CROSS REID: No, this case -- this
6 case --

7 MR. GOODMAN: Is over.

8 CHAIRPERSON CROSS REID: -- is over.

9 MR. HART: Madame Chair, please. Madame Chair,
10 please. Please indulge me. I've been here before in terms of
11 allowing the Applicant and opposition, et cetera, to leave
12 while they're not under the gavel, and when they come back to
13 us as staff, we get into all sorts -- I'd feel much more
14 comfortable if everybody walks out of the room today agreeing
15 on a date.

16 CHAIRPERSON CROSS REID: Okay.

17 MR. GOODMAN: October 2nd is the -- okay.

18 MR. HART: All right. Let's start working back
19 from October. October 2nd to September the 18th, is good?

20 MR. GOODMAN: And that's the last submission --

21 MR. HART: Yes, sir.

22 MR. GOODMAN: -- is September 18th, and that will
23 be my rebuttal for anything that has come in the record prior
24 to that?

25 MR. HART: Yes, un-huh.

1 MR. GOODMAN: Okay.

2 MR. HART: And we can back up to September.
3 Let's not say the 4th. September the 5th for the first set of
4 submissions.

5 MR. GOODMAN: For his submission that would be in
6 response to my submission.

7 MR. HART: Un-huh.

8 MR. GOODMAN: So this would be opponents'
9 submissions.

10 MR. HART: Okay.

11 MR. GOODMAN: Is September 5th.

12 MR. HART: Yes.

13 MR. GOODMAN: Okay, and then backing up from
14 that, I get my submission prior to that?

15 MR. HART: I didn't write this down. Response,
16 response, responses. Okay.

17 MR. GOODMAN: All of us have September 5th for a
18 submission date?

19 MR. HART: No, no.

20 MR. GOODMAN: So I have one and then they have
21 one and then I have one. Okay.

22 MR. HART: Okay. The first set of submissions
23 was on September 5th, back up to weeks to September the 29th --
24 August the 22nd. How is that?

25 MR. GOODMAN: August 22nd --

1 MR. HART: Yes.

2 MR. GOODMAN: -- and then September 5 and
3 September 18th and a decision date of October 2; is that
4 correct?

5 MR. HART: That's correct, un-huh.

6 MS. BAILEY: Mr. Goodman, it's also very
7 important that you serve the parties, and the parties in this
8 case are the ANC and the clients that Mr. Nate Gross
9 represents. Your submissions must be served on those parties.

10 MR. GOODMAN: ANC and Mr. Gross?

11 MS. BAILEY: Yes, sir.

12 MR. GOODMAN: And there are no other parties
13 other than those two parties.

14 MS. BAILEY: And the documents, the photographs
15 and so forth that's on the file, you need to leave that with us
16 today.

17 MR. GOODMAN: Well, you're welcome to have it,
18 but most of them were submitted into the record in color. So
19 do you still need them?

20 MS. BAILEY: Just the ones that we don't have.

21 MR. GOODMAN: I think you've got them all.

22 MR. HART: Okay.

23 MR. GOODMAN: You're welcome to have them.

24 CHAIRPERSON CROSS REID: Okay?

25 MR. GOODMAN: Thank you.

1 CHAIRPERSON CROSS REID: All right. Are we all
2 set?

3 MR. GOODMAN: Thank you.

4 CHAIRPERSON CROSS REID: All right. Thank you
5 very much.

6 We'll recess for 15 minutes.

7 (Whereupon, the foregoing matter went off the
8 record at 5:33 p.m. and went back on the record
9 at 6:05 p.m.)

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E-V-E-N-I-N-G S-E-S-S-I-O-N

(6:05 p.m.)

CHAIRPERSON CROSS REID: All right. The meeting will resume. I mean the hearing will resume.

Ladies and gentlemen, the Board has discussed and made an assessment of the situation given the fact that the hour is late in trying to start a case when we're all kind of worn out, and we do apologize for the fact that we know that most of you have been here all afternoon, but as you saw, those other two cases took considerably more time than what we could anticipate.

So what we thought we would do is to take care of preliminary matters and party status and then reschedule, continue this case until I think it was September the 20th?

PARTICIPANT: The afternoon of September 20th, starting at --

CHAIRPERSON CROSS REID: The 20th. We would then carve out the entire afternoon because I don't think that having two cases before you today really worked well because of the fact that this case is far too involved and too complicated to try to do anything else in the afternoon.

So if there is any objection to that or any comments from either the Appellant or -- the Appellee or any party, please come forward to discuss this, or the Intervenor.

MS. DWYER: Good evening. For the record, Aureen

1 Dwyer representing Sunrise, the owner of the property, and I
2 would just like to ask if there's any possibility of any
3 earlier date. That's essentially two months away, and this is
4 a very important project to the owner, and if there's any
5 opportunity of a special hearing date to be able to hear it
6 earlier, we would appreciate that.

7 CHAIRPERSON CROSS REID: Okay. Thank you.

8 MS. HOLMES: I was just going to respond.

9 CHAIRPERSON CROSS REID: All right. Ms. Dwyer,
10 what could you live with? The month of -- now, here's what
11 we're up against. The month of August we're in recess. So we
12 have only the remaining days in July and then September. Now,
13 the one problem that we had was the fact that there had been a
14 motion to have four members and we have not ruled on that
15 motion yet, but what other members will go on vacation the 1st
16 of September through the 15th.

17 PARTICIPANT: August.

18 CHAIRPERSON CROSS REID: September, through the
19 13th of September.

20 And then we had a request that we not have our
21 regularly scheduled day in September because of what's the
22 holiday? Rosh Hashanah, and so given all of those variables
23 and constraints, that's how it came up with the 20th.

24 So did you have some suggestion or some idea?

25 MS. DWYER: Well, I didn't know if there was any

1 availability to be continued on one of the hearing dates that's
2 already scheduled or if there's any possibility of a special
3 hearing date in the very beginning of August before you take
4 your August break.

5 And with respect to the issue of a four-member
6 Board, I mean, everyone takes their chances when they come down
7 here as to whether a Board member is sitting, and I don't think
8 the request for a four-member Board should be determinant. If
9 there is a possibility of giving us an earlier hearing date in
10 September, we would like that.

11 CHAIRPERSON CROSS REID: Okay.

12 MS. DWYER: I don't know what your schedule is
13 for late July, whether those cases are anticipated to take the
14 full day, whether there's any time, but --

15 CHAIRPERSON CROSS REID: Well, look at --

16 MS. HOLMES: Well, Your Honor.

17 CHAIRPERSON CROSS REID: Yes.

18 MS. HOLMES: I'm sorry. I would like to be heard
19 on that. I'm Marilyn Holmes from the Advisory Neighborhood
20 Commission. We are a party to this appeal.

21 And we would object to proceeding on a day where
22 we would not have the opportunity to expand the number of
23 participants in the hearing. I note that it was Sunrise, of
24 course, who is through their motion to recuse one member who
25 has caused this difficulty to arise. Of course, it does not

1 disadvantageous them, but it is very disadvantageous to us, and
2 we would ask that that not be a consideration.

3 CHAIRPERSON CROSS REID: Okay. Now, at this
4 point in time, September, there is no early date in September
5 because of the fact that we will be down three.

6 I don't know. Ms. Mitten, did you have a
7 preference as to participation on this case or not?

8 COMMISSIONER MITTEN: Well, I guess there's two
9 things. One is there is a possibility of going forward in
10 August, although, again, with three members, or in September,
11 and there would be three members hearing the case, but a fourth
12 member could read the record and participate in the decision,
13 is, you know, another way of bridging the problem.

14 CHAIRPERSON CROSS REID: Okay. So even if you're
15 not here for the actual hearing, then you're saying that you
16 would agree to read the record so you'd be --

17 COMMISSIONER MITTEN: Sure.

18 CHAIRPERSON CROSS REID: -- prepared for the
19 decision date October the 2nd, is it?

20 MS. DWYER: Yes.

21 CHAIRPERSON CROSS REID: Now, would that work?

22 MS. DWYER: October 2nd?

23 COMMISSIONER MITTEN: That would be the decision
24 date. The hearing would be in August with three members --

25 CHAIRPERSON CROSS REID: No, no. The hearing

1 would be in September with three members possibly.

2 MS. DWYER: Either way.

3 MS. HOLMES: Well, if it's going to be in
4 September anyway, why don't we hear it with four members?

5 Our strong preference is we think there are
6 enough difficult issues here. I'm not going to argue the
7 entire case --

8 CHAIRPERSON CROSS REID: Yeah, okay.

9 MS. HOLMES: -- but there are a number of areas
10 where we believe the Applicant concealed or misrepresented or
11 evaded --

12 CHAIRPERSON CROSS REID: Okay, but --

13 MS. HOLMES: -- and the explanation of that is
14 important because we can assist in your deliberations.

15 CHAIRPERSON CROSS REID: But the fact of the
16 matter is if there are only three or if there are four members,
17 the fourth member has already, whoever that -- whoever --
18 whether it's in August or September, the fourth member has
19 already committed to reading the record.

20 MS. HOLMES: Well, if you've ever read a 100 page
21 transcript of a dry, administrative hearing, you can understand
22 why I would prefer strongly --

23 CHAIRPERSON CROSS REID: We understand that, but
24 we do it all the time. So okay. So that being the case, what
25 would be the other date that -- any suggestions, Board members?

1 If it's in August, I can.

2 MS. KRESS: August is totally open, whatever you
3 choose. In September, because of the first week, I don't see
4 you adding, doing two days the first week in September because
5 there's a holiday, and the third week is what we had proposed.

6 CHAIRPERSON CROSS REID: What about the second
7 week?

8 MS. KRESS: The second week would be the only one
9 you could possibly --

10 CHAIRPERSON CROSS REID: And what date would that
11 be?

12 MS. KRESS: That would be whatever date. I mean,
13 you've got Tuesday booked, and you've got Thursday, the --

14 CHAIRPERSON CROSS REID: Oh, you mean to add
15 another day?

16 MS. KRESS: Yes. There's no way we can fit it in
17 on the week of the 11th. Besides, on the week of the 18th to
18 fit it in, I'm going to have to cancel the --

19 CHAIRPERSON CROSS REID: Right, right.

20 MS. KRESS: -- and move things around.

21 MS. DWYER: Then I would request August, and that
22 would give the fourth Board member time to get the transcript
23 and to read the transcript before the October decision meeting.

24 MEMBER GRIFFIS: Could we entertain a Thursday,
25 the 2nd of August? And that way we could clear everything up

1 the first week of August and have a little time in the rest of
2 the month.

3 CHAIRPERSON CROSS REID: Well, then that would be
4 -- remember that would be then three members. Still, either
5 way I think there's going to be three members.

6 MEMBER GRIFFIS: No, I understand that. But then
7 we may be able to expedite that up until September and not go
8 into October on this.

9 CHAIRPERSON CROSS REID: Oh, and then have a
10 decision in September.

11 MEMBER GRIFFIS: Un-huh.

12 CHAIRPERSON CROSS REID: Okay.

13 MS. DWYER: That would be all right with us.

14 MS. HOLMES: My own schedule for that week is
15 that I am in San Antonio on a hearing, which is -- I don't know
16 when it will end. It's possible I would be in San Antonio
17 still on that date. That would be highly disadvantageous and
18 objectionable.

19 CHAIRPERSON CROSS REID: What, the 2nd?

20 MS. HOLMES: August 2nd, yes.

21 CHAIRPERSON CROSS REID: So that wouldn't work.
22 Now, that was, quite frankly -- now, I have quite a bit of time
23 out up town in August, but I was willing to stay for that, you
24 know, just that first week, not go until after that date, but
25 if that doesn't work for you, it's like I won't be here the

1 rest of August.

2 MS. DWYER: Is there no one else from the ANC
3 that can represent --

4 MS. HOLMES: No, not adequately.

5 CHAIRPERSON CROSS REID: Well, then that takes us
6 back into September. then that leaves us the second week in
7 September.

8 MS. KRESS: What about the next week in August?
9 I mean, because you're going to be three people anyway. I
10 thought you were into the August so that the missing person
11 could read the record and have leisurely -- leisurely, August
12 on vacation -- to read the record if it was heard early in
13 August.

14 MS. DWYER: Maybe Tuesday, August 7th, which
15 would be the following Tuesday after that Thursday, and Marilyn
16 would be back at that point in time.

17 CHAIRPERSON CROSS REID: Okay. Still three, but
18 then it would be Levy, Griffis, and Mitten.

19 MS. KRESS: But then you could read the record.

20 CHAIRPERSON CROSS REID: I can read the record.

21 MS. KRESS: And then we can go for a September
22 decision.

23 CHAIRPERSON CROSS REID: Sure, sure.

24 MS. KRESS: I mean as an option here.

25 MS. DWYER: That would work for us.

1 CHAIRPERSON CROSS REID: Okay.

2 MS. KRESS: Does it work for you?

3 CHAIRPERSON CROSS REID: Does it work? All
4 right. So --

5 MS. HOLMES: Wait. We're getting a no here.

6 Our expert witness, Mr. Chris Frombolutti
7 (phonetic), will be out of the country during that period.

8 August is a difficult time. I'm sure many people
9 have vacation schedules.

10 CHAIRPERSON CROSS REID: Well, let's see now.
11 Whenever we try to juggle a schedule like this, particularly
12 when there's a recess, there is always the aspect that no
13 matter what date we try to make it on, someone can't make it.

14 So we're now just going to have to start cutting
15 our losses here and then just --

16 MS. HOLMES: Well, my understanding is everybody
17 could make it in September. I believe the dates in September
18 would be acceptable.

19 CHAIRPERSON CROSS REID: But Ms. Dwyer said that
20 that is not --

21 MS. DWYER: Right. That is a two-month delay,
22 and we're trying to be more equitable and decide this sooner as
23 opposed to waiting a full two months.

24 MS. HOLMES: Well, my understanding is it's being
25 decided the same date no matter when the hearing is. October

1 2nd is the decision date. Isn't that --

2 CHAIRPERSON CROSS REID: No. If it is in August,
3 then it would be September that's the hearing date, unless --
4 is there -- is there any possibility of before the end of this
5 month biting the bullet, adding another day and just getting it
6 over with?

7 MS. KRESS: Adding another day, you are just
8 really booked until the end of this month. Adding another day
9 in July is absolutely an option.

10 CHAIRPERSON CROSS REID: How do other Board
11 members feel about that as a possibility?

12 COMMISSIONER MITTEN: If you're game for it, I'm
13 game for it.

14 CHAIRPERSON CROSS REID: Mr. Griffis, could you
15 fall back? This has kind of left you out.

16 MEMBER GRIFFIS: Yeah, my July.

17 CHAIRPERSON CROSS REID: Lose a third member
18 there.

19 MEMBER GRIFFIS: We're in the middle of it
20 already. There's not a lot left as I'm looking at it. The
21 week of the 23rd is quite complicated for me. Possibly Monday,
22 the 30th, would work.

23 CHAIRPERSON CROSS REID: The day before the 31st.

24 MEMBER GRIFFIS: yeah.

25 MS. HOLMES: That's when I'm in San Antonio.

1 CHAIRPERSON CROSS REID: That won't -- I think
2 that prudence would dictate that we have a full calendar on the
3 31st, which is going to require quite a bit of preparation, and
4 then this particular case also will -- even though we're
5 prepared for this today, so we just have to shuffle that one.

6 MEMBER GRIFFIS: What about Friday, the 27th?

7 MS. DWYER: What about Friday, the 3rd of August?

8 DR. CHIAPELLA: Well, it was later in August. I
9 mean we only looked at up to the 17th. What about later in
10 August?

11 MS. HOLMES: Friday, the 3rd would work for us if
12 you believe that you'll be back.

13 MS. HOLMES: Yeah, I should be back by Friday.

14 MS. KRESS: So you're looking at Friday, August
15 3rd, right now?

16 MS. HOLMES: Un-huh.

17 MS. KRESS: Let's check. Friday, August 3rd.

18 CHAIRPERSON CROSS REID: If it's that -- you
19 know, I may be able to.

20 MS. KRESS: The 3rd?

21 CHAIRPERSON CROSS REID: I may be able to, but at
22 least we'll have three, maybe four. Is that good? Mitten,
23 Griffis, Levy?

24 MS. KRESS: Speak now, anyone. August 3rd?

25 MEMBER LEVY: I don't -- I have a conflict on a

1 Friday, but I don't believe it's the 3rd, and I don't have that
2 date in front of me. I believe I'm available though.

3 CHAIRPERSON CROSS REID: Okay, and then everyone
4 else, ANC, Ms. Dwyer?

5 MS. DWYER: Yes.

6 CHAIRPERSON CROSS REID: And I'm sorry. Your
7 name?

8 DR. CHIAPELLA: Dr. Chiapella.

9 CHAIRPERSON CROSS REID: Oh, okay. All right.
10 Dr. Chiapella, that's okay with you?

11 DR. CHIAPELLA: Yes.

12 CHAIRPERSON CROSS REID: Okay. Then Friday,
13 August the 3rd, it is. We'll just put that day, and then we'll
14 start in the morning?

15 MS. KRESS: You pick when you --

16 CHAIRPERSON CROSS REID: Yeah, I'd like to start
17 in the morning and try to, you know, get done with it.

18 MS. KRESS: Start at 9:30 Friday morning?

19 CHAIRPERSON CROSS REID: Un-huh.

20 MS. KRESS: Okay. Nine, thirty, Friday morning.

21 COMMISSIONER MITTEN: And be done by 12?

22 CHAIRPERSON CROSS REID: Right, right.
23 Absolutely. Okay. So then that's resolved. So now we go to
24 the other preliminary matters, one of which is party status. I
25 think that we had one request for party status.

1 MS. BAILEY: Madame Chair, would it be okay if I
2 called the case before you do party status?

3 CHAIRPERSON CROSS REID: Sure.

4 MS. BAILEY: Applicant -- I'm sorry. Appeal
5 16716 of Nebraska Avenue Neighborhood Association, pursuant to
6 11 DCMR 3100 and 3101, from the administrative decision of the
7 Zoning Administrator, Department of Consumer and Regulatory
8 Affairs, in the issuance of a building permit number B435464,
9 issued on March 3rd, 2001, to Sunny and Louis Keyes, et al., to
10 permit the construction of a 102 unit handicapped, assisted
11 living apartment residence in an R-2 and R-5-D district at
12 premises 5111, 5113, 5117, 5119, 5121, 5123, and 5125
13 Connecticut Avenue, N.W., and 5201, 5203, and 5205 Chevy Chase
14 Parkway, N.W. The property is located in Square 1989 on Lots
15 49 through 57 and 161.

16 All those wishing to testify, would you please
17 stand? Raise your right hand, please.

18 (Whereupon, the witnesses were duly sworn.)

19 MS. BAILEY: Thank you.

20 Thank you, Madame Chair.

21 CHAIRPERSON CROSS REID: All right. Let's first
22 take up party status. I think we have one request for party
23 status; is that correct, Ms. Bailey?

24 MS. BAILEY: Party status, no. What I have are
25 preliminary matters. There are three preliminary matters I

1 thought the Board was going to take up, but I don't have a
2 request -- this is an appeal, and normally we just have the
3 Appellant and the Intervenor.

4 CHAIRPERSON CROSS REID: Oh, okay. All right.
5 Then there's no party status. Okay.

6 Then we have three matters that we are supposed
7 to take up this afternoon. Now, there was an issue regarding
8 the Zoning Commission member on the BZA, and Ms. Mitten is
9 going to speak to that. This has been raised with regard to
10 this particular case.

11 COMMISSIONER MITTEN: Yes. At the hearing that
12 we had on the motion to recuse Board Member Renshaw, the issue
13 was raised about whether or not it would be appropriate for the
14 Zoning Commission member to sit on this case, given that we had
15 heard a rezoning application for a series of properties that
16 included the property that's the subject of this appeal. So
17 this statement is in that regard.

18 When Congress created the BZA in 1938, it
19 expressly provided that one member of the Zoning Commission
20 would serve as a member of the BZA. In 1975, the District of
21 Columbia Court of Appeals in a case called Sheridan-Kalorama
22 Neighborhood Council v. District of Columbia Board of Zoning
23 Adjustment reviewed the relationship between the Zoning
24 Commission and the BZA. The court characterized the BZA as "an
25 adjunct of and in a sense complementary to the Zoning

1 Commission," and recognized that the Zoning Commission member
2 of the BZA would be in regular contact with other Zoning
3 Commission members and aware of their views as to matters
4 actually pending before the Commission and matters of general
5 policy.

6 The court stated that while the Zoning Commission
7 member to the BZA is thus authorized to express the
8 Commission's general policy as concerns the Board and to cast
9 his or her vote with full knowledge of the attitudes and policy
10 positions of the other Commission members, he or she is bound
11 to cast a vote in the BZA proceedings based exclusively on the
12 BZA record of proceedings.

13 The court concluded that there is "no essential
14 conflict between serving as a Zoning Commission member of the
15 Board and casting a vote based exclusively upon the record
16 before it," end quote.

17 In light of the statutory scheme which places a
18 member of the Zoning Commission on the BZA, I do not believe
19 that there's any conflict in my participation in this BZA
20 appeal. Nonetheless, if any parties to the appeal believe that
21 there are any specific materials in the Zoning Commission case
22 file or transcript that should be included in this appeal and
23 subject to cross examination and/or response, I would encourage
24 you to bring that material to the attention of the BZA during
25 the hearing so that the Board can determine what would be the

1 most efficient means of considering it and any cross
2 examination or response.

3 Thank you, Madame Chair.

4 CHAIRPERSON CROSS REID: All right. Thank you
5 very much.

6 We'll move now to there was a request for
7 clarification from Dr. Chiapella.

8 DR. CHIAPELLA: Yes.

9 CHAIRPERSON CROSS REID: From the Nebraska Avenue
10 Neighborhood Association, and that was in regard to the
11 properties owned by Sunrise, and the issue was raised that the
12 Sunrise -- established that Sunrise was not at this time the
13 owner of all of the properties which the Zoning Administrator's
14 decision is being appealed.

15 And we discussed that, and it was determined that
16 basically it is not required that the Applicant own all of the
17 properties that is a basis for this particular case.

18 And if there is any further comment, Dr.
19 Chiapella, on this issue, then we'd like to hear it, but our
20 understanding is that that is not necessary that Sunrise own
21 all of the properties.

22 DR. CHIAPELLA: I appreciate that clarification.

23 Does that mean that other owners may join as parties or is
24 this the cutoff date for that? I just wanted clarification
25 because there are other owners.

1 MS. DWYER: Madame Chair, I can clarify for the
2 record. As of this date, Sunrise is the owner of all
3 properties. It may not have been reflected in the city's
4 records at the time that Ms. Chiapella checked, but we can file
5 information as to the closing dates on all properties.

6 So Sunrise owns all of the properties that are
7 the subject of this appeal.

8 CHAIRPERSON CROSS REID: Okay. All right. Thank
9 you very much.

10 The other issue that was raised in this request
11 for clarification was in regard to Mr. Ruiz.

12 MS. DWYER: Mr. Ruiz.

13 CHAIRPERSON CROSS REID: Ruiz.

14 MS. DWYER: Right. Mr. Ruiz is the architect for
15 the project, and we see no conflict in his appearing as an
16 expert witness at this hearing, particularly since he has
17 designed the building.

18 One of the issues raised in this request for
19 clarification is that Mr. Ruiz submitted an environmental
20 impact screening form. We questioned why that issue was even
21 raised, but I wanted to state for the record that we will
22 object to any testimony or information that's submitted with
23 regard to the environmental impact screening form or the
24 Environmental Policy Act because this Board has clearly said
25 that that is not within its jurisdiction when it is hearing

1 appeal cases.

2 So as to that issue, we ourselves wanted to
3 clarify that.

4 I would also like to point out that we received
5 copies of these three motions when we arrived this afternoon.
6 So this is the first time that we've had a chance to respond.
7 Otherwise we could probably have clarified some of this
8 information before this evening.

9 CHAIRPERSON CROSS REID: Okay. I think that in
10 regard to Mr. Ruiz being an expert witness, that is something
11 that is determined -- will be determined by this Board, as to
12 whether or not we feel that he has demonstrated that he has the
13 expertise to be able to testify as an expert.

14 And as to the submission of the environmental
15 impact screening form, I think that becomes a moot point
16 because, again, that is not something within the purview of
17 this particular Board, in the first place.

18 And the other thing and the other and last thing
19 is a request to strike -- no.

20 MS. DWYER: Madame Chair, if I may address this,
21 and again, if we had seen it in advance, we could clarify it.

22 CHAIRPERSON CROSS REID: Okay. No, this is in
23 regard to -- I haven't even said it yet.

24 MS. DWYER: Okay.

25 CHAIRPERSON CROSS REID: This is in regard to the

1 set-down rule.

2 MS. DWYER: Right.

3 CHAIRPERSON CROSS REID: And the participation of
4 Corporation Counsel, and there was an issue raised about some
5 meeting that it was learned that it was overheard that the
6 opinion of the Corporation Counsel as to the set-down rule came
7 out.

8 And in that regard, the Board feels that this is
9 something that's taken out of context, and basically it's
10 hearsay, and as such, the representations of the statements
11 that were made cannot be verified, and when this Board feels
12 it needs to do so, we do seek opinions of Corporation Counsel,
13 but there is no need to formally strike from the record the
14 information that has been submitted by Corporation Counsel to
15 us, and this information had been requested to assist us in
16 being able to carry out our duties.

17 This was not a motion, but I guess it's just
18 basically an FYI type of thing to discuss the rationale behind
19 our actions.

20 Yes.

21 MS. HOLMES: If I might add, I have an addition
22 to the motion that was made. There was a motion made or
23 denominated request to strike from the record this material.
24 However, as I have read what is in the record, it appears that
25 information about the Corporation Counsel's views have been

1 communicated in some fashion to Sunrise, which means that the
2 Corporation Counsel's written opinion, which I understand was
3 issued on this point, is no longer privileged because it has
4 been communicated to someone outside of the attorney-client
5 privilege.

6 And we have been requesting this opinion for
7 months from the city and had been denied it on the grounds that
8 it is privileged information. That is obviously no longer
9 correct, and therefore, I ask to be provided a copy of the
10 opinion.

11 CHAIRPERSON CROSS REID: Okay. Why don't we let
12 Corporation Counsel, Ms. Sansone, respond to that, please?

13 MS. SANSONE: Madame Chair, in regard to any
14 Corporation Counsel memorandum that was provided to DCRA that
15 was privilege, the privilege is held by DCRA, and that is the
16 entity that would have to waive the privilege or possibly if
17 they did, in fact, release the written opinion to Sunrise, then
18 they would have waived the privilege by sharing it outside
19 their department.

20 However, I would not be in a position to say
21 whether or not DCRA has waived any privilege. That really you
22 would need to inquire from DCRA, and Mr. Bennett is here as
23 their attorney representing them today.

24 MS. DWYER: And, Madame Chair, may I speak to the
25 assumption in this, which is that Sunrise has the Corporation

1 Counsel opinion?

2 We do not; we have not; and we have seen it.
3 What we have relied upon in our statement that this project is
4 vested is a 1987 Corporation Counsel opinion which we attached
5 to our statement as Exhibit J, and our assumption that any
6 subsequent opinions by Corporation Counsel would be fully
7 consistent with that.

8 CHAIRPERSON CROSS REID: Okay.

9 MS. HOLMES: Let me clarify my motion as well. I
10 was not, because I have no knowledge of whether a written
11 opinion was provided. My point is that information was
12 communicated, and as soon as information that is within the
13 attorney-client privilege is communicated to someone outside of
14 the privilege, then that information is no longer privileged
15 and should be provided to other parties as well, and it's my
16 contention that that's what occurred in this instance.

17 CHAIRPERSON CROSS REID: But I think what we have
18 established here this afternoon -- this evening is that the
19 information that was alleged to have been given to Sunrise, the
20 attorney has said that there was no information that was given
21 to them exclusive of what was given to anyone else.

22 And the other part --

23 MS. HOLMES: I'm checking for the reference. I'm
24 sorry.

25 CHAIRPERSON CROSS REID: Okay.

1 MR. BENNETT: Madame Chair, I'm William Bennett.
2 I'm also with Corporation Counsel's office, but I'm
3 representing the Zoning Administrator.

4 There was an opinion from my office addressed to
5 the Department of Consumer and Regulatory Affairs, and when we
6 do an opinion, that opinion is for the benefit of the
7 requesting party, and to my knowledge, that opinion has not
8 been shared outside of the department.

9 However, it has to do with the vesting issue, and
10 because of the determination of the department that the
11 application was filed before the Zoning Commission scheduled
12 its hearing, that is consistent with the result obtained in
13 opinion.

14 MS. HOLMES: May I refer you to page 8 of the
15 Applicant's filing? It's undated. It's their filing entitled
16 "Statement of Sunrise Connecticut Avenue Assisted Living LLC,
17 Owner," page 8, in the middle of the page, the sentence
18 beginning, "As the Office of Corporation Counsel has
19 determined, the set-down rule is inapplicable in the subject
20 situation because the building permit application was filed
21 before the down zoning was set down for hearing."

22 I think they're talking about this case.

23 CHAIRPERSON CROSS REID: But I think Ms. Dwyer
24 alluded to the fact that that was an opinion that was
25 promulgated --

1 MS. DWYER: And we reference in that same
2 paragraph --

3 CHAIRPERSON CROSS REID: -- in 1987.

4 MS. DWYER: Well, that's in paragraph -- Exhibit
5 J. We reference that same Exhibit J, which was a 1987 opinion.

6 CHAIRPERSON CROSS REID: Yeah. So that -- okay,
7 but I think that the point that's being made --

8 MS. HOLMES: But --

9 CHAIRPERSON CROSS REID: Excuse me. I think that
10 the point that's being made is that there could have been any
11 number of Corporation Counsel opinions regarding the same
12 issue, but the facts of the matter remain the same as to the
13 vesting portion. They were establishing the rule for vesting,
14 and regardless as to where it came from, the rule remains the
15 same.

16 I think that's what you're getting to, not the
17 origin of it.

18 MS. HOLMES: I would understand that, and I do
19 understand, but --

20 CHAIRPERSON CROSS REID: Not the origin of the
21 memo, but the basic vesting and establishing what that rule is
22 and how it pertains to this case.

23 MS. HOLMES: Right, and the context of the memo
24 as they presented it was that that determination had been made
25 for this matter, and I understand that there is a Corporation

1 Counsel memo.

2 CHAIRPERSON CROSS REID: But I think that --

3 MS. HOLMES: It may not say that, but --

4 CHAIRPERSON CROSS REID: I think that it was --

5 MS. HOLMES: -- they're alleging that it does.

6 CHAIRPERSON CROSS REID: -- made -- that the memo
7 referred to the issue of vesting in regard to this case or any
8 other case that came before this Board. I think that was the
9 point that was being made.

10 COMMISSIONER MITTEN: Madame Chair.

11 CHAIRPERSON CROSS REID: Yes.

12 COMMISSIONER MITTEN: If I could just help to
13 clarify, which is Mr. Bennett appropriately characterized it as
14 an opinion, this Board decides whether or not the set-down rule
15 applies in a particular case. We can seek advice from
16 Corporation Counsel and parties can make their positions known,
17 but it's our decision to make.

18 So it has not been -- that decision has not been
19 made yet, regardless of the way that it's been characterized in
20 this particular case.

21 MR. BENNETT: If I may in response to Ms. Mitten,
22 you're correct in that, and I'm sure over the course of the
23 hearing that there will be legal arguments as to addressing
24 that very issue.

25 CHAIRPERSON CROSS REID: All right. Well, thank

1 you very much.

2 I think that that sufficiently addresses that
3 particular matter or that request. It was not made as a
4 motion.

5 So now let's move to the last and final one. I
6 think I said that before, didn't I?

7 MS. DWYER: Your Honor, I forgot this one.

8 MS. HOLMES: Could I just mention I have two
9 additional preliminary matters.

10 CHAIRPERSON CROSS REID: Okay.

11 MS. HOLMES: I don't know how long your list is.

12 CHAIRPERSON CROSS REID: Let's dispose of this
13 one.

14 MS. HOLMES: That's fine.

15 CHAIRPERSON CROSS REID: Let us dispose of this
16 one. It's the last one that we have, and that is the motion
17 for the participation of four Board members, and there was a
18 request, again, submitted by the Nebraska Avenue Neighborhood
19 Association, letter signed by and a motion signed by or
20 presented by Dr. Chiapella, in which there was a request that
21 there be four Board members sitting on this particular case,
22 and they would want to bolster their position by presenting an
23 argument for that.

24 And basically the Board has functioned in some
25 instances with three members or four members or five members.

1 Our regulation requires that there be a quorum of three.

2 Any discussion on this matter, Board members?

3 MEMBER GRIFFIS: I think our regulations, 11
4 DCMR, are fairly clear on our own operating, and I don't think
5 we need to spend much more time on the motion.

6 CHAIRPERSON CROSS REID: The motion on the floor
7 is to --

8 MEMBER GRIFFIS: Do we need a motion?

9 CHAIRPERSON CROSS REID: Well, there's a motion
10 by a party. So we have to --

11 MEMBER GRIFFIS: We have to respond to this
12 thing?

13 CHAIRPERSON CROSS REID: Yeah.

14 COMMISSIONER MITTEN: Well, before we even go to
15 a specific response, I guess I wouldn't want to -- I'm not sure
16 that this is properly before us, and the reason I say it is in
17 any complex case we strive to have as many Board members
18 sitting on the case as possible because that's just the way we
19 do business.

20 But there's no guarantees. So if we deny the
21 motion, I wouldn't want to say, well, we're not having four
22 Board members, and if we grant the motion, I wouldn't want to
23 say we're guaranteeing four Board members.

24 So that's why I'm not clear, and maybe Ms.
25 Sansone could say whether or not this is even a proper motion

1 for us to consider.

2 MS. SANSONE: Madame Chair, I would suggest this
3 is not a proper motion. The Board's rules provide the full
4 membership is five members. A quorum is three. By virtue of
5 the Zoning Act of 1938, as well as the Board's own rules, any
6 action on this appeal will require the positive vote of three
7 of the members. So that could be three out of three or it
8 could be three out of four in this case.

9 And I think the concerns raised by Member Mitten
10 are valid. You know, the Board does try to have as many people
11 here as possible, but there are things that come up that
12 sometimes make that impossible, and the Board should adhere to
13 its rules and customs in hearing these cases, and it probably
14 is not necessary to actually rule on this motion.

15 CHAIRPERSON CROSS REID: So basically don't box
16 ourselves in inadvertently by trying to respond to the motion
17 when we just offered it under our rules and regulations that we
18 are compelled to operate under.

19 Yes.

20 DR. CHIAPELLA: I understand the Board is making
21 an effort to have four members participate. That's my
22 understanding here, and I would be happy to withdraw the
23 motion.

24 CHAIRPERSON CROSS REID: Sure. You can just put
25 it in the form of a request and just request that there be four

1 Board members, and we --

2 DR. CHIAPELLA: I so request and I --

3 CHAIRPERSON CROSS REID: Okay.

4 DR. CHIAPELLA: -- appreciate the opportunity.

5 CHAIRPERSON CROSS REID: Thank you very much.

6 And we would make all effort to try to comply
7 with that request.

8 DR. CHIAPELLA: Thank you very much.

9 CHAIRPERSON CROSS REID: Okay. Now, that is all
10 that we have, I think, and I understand that you have --

11 MS. HOLMES: I have two additional preliminary
12 matters, both dealing with situations of disqualification.

13 The first preliminary is that I would move to
14 reinstate Board Member Renshaw to this Board of Zoning Appeals
15 on this matter. She was not disqualified under any reasonable
16 standard of disqualification. My understanding is -- of
17 course, I was not present at the discussion of this because it
18 was scheduled so precipitously. I wasn't available.

19 But my understanding is that she was not
20 disqualified for actual bias and, indeed, she did not have
21 actual bias. I think that's pretty well established.

22 And so it appears that the only basis for her
23 disqualification was an allegation that she had received public
24 information of the sort that every Board member who is likely
25 to participate in this appeal has also --

1 CHAIRPERSON CROSS REID: Okay, but --

2 MS. HOLMES: -- no doubt encountered.

3 CHAIRPERSON CROSS REID: -- wait one second. I
4 don't know if it's proper for us to revisit this particular
5 issue. We did this last week, and we took a vote on it, and
6 that vote established the fact that Ms. Renshaw would be
7 recused. We asked her first if she would recuse herself.

8 She didn't want to do that, and then based on the
9 rules and regulations under which we have to operate, we then
10 took a vote, and that vote resulted in her being recused, and
11 that was already taken care of last week.

12 So I don't what -- I don't think -- I don't know
13 how the other Board members feel about this -- that we should
14 revisit that whole issue again this week because that's been
15 resolved, and it was -- it was a very difficult decision for
16 this Board to make. Understand that.

17 MS. HOLMES: I understand.

18 CHAIRPERSON CROSS REID: It was not anything that
19 any of us were happy about having to do. Nonetheless we were -
20 - our hands were tied by our rules, and that's what we did.

21 MS. HOLMES: If I could turn to my second
22 disqualification subject, and then reserve the right to just
23 return once --

24 CHAIRPERSON CROSS REID: Okay.

25 MS. HOLMES: -- more briefly to that issue, I

1 have come to the realization that a staff member on the Board
2 here by the name of Richard Nero was an employee of Wilkes,
3 Artis law firm during the period when that law firm represented
4 Sunrise, and indeed, he worked on the Sunrise matter, and he
5 has not been disqualified from handling any of the matters
6 relating to the instant application.

7 Now, if Mr. Nero were an attorney, which I
8 understand he is not, I wouldn't just be making a
9 disqualification motion. I would be looking at professional
10 responsibility issues because it would be very clearly a
11 violation of professional responsibilities of an attorney to be
12 employed by a party to a matter working for a law firm and then
13 to turn around and assist a Board in adjudicating that same
14 matter. It's clearly improper.

15 He is not, however, an attorney. That does not
16 make it any less improper, and the difficulty it presents is
17 that it not only makes it improper for him to participate
18 because he has had this connection, worked on the identical
19 matter, signed letters that were sent to the city officials
20 relating to this identical project; not only is he
21 disqualified, but he has, I understand, because I have before I
22 realized this connection, I dealt with him on a number of
23 procedural matters, and so it's clear that he has assisted in
24 the Board's resolution of this matter. He's assisted in
25 procedural issues. He has presumably forwarded materials to

1 you, provided information to you as Board members.

2 So that his disqualification, which is apparent
3 and should have been identified earlier, but unfortunately was
4 not, has had the effect of tainting every member of the Board
5 who has received information from him or dealt with him
6 relating to this matter.

7 CHAIRPERSON CROSS REID: Okay. Ms. Sansone, I
8 ask you to please respond.

9 MS. SANSONE: Yes, Madame Chair.

10 The Office of Zoning and Office of Corporation
11 Counsel are aware that Mr. Nero did have involvement in this
12 matter while he was in private employment. However, he has not
13 provided the Board with any information, verbal or written
14 information, concerning this case procedurally or as to the
15 substance of the case, and he will not be.

16 He is disqualified by virtue of his previous
17 employment. There's no question about that.

18 He did apparently work with the parties on some
19 procedural issues, and as far as I was able to determine, the
20 were just general matters that you would do in dealing with the
21 public, but he has not, to my knowledge, had any involvement at
22 all with the Board on this case.

23 And therefore, I mean, he is disqualified from
24 providing the Board advice or information on the substance of
25 this case. That is true, but to my knowledge, that has not

1 occurred and will not be occurring.

2 MS. HOLMES: Well, if I could return to my
3 earlier concern, the reason I raised it is that I have had a
4 number of dealings with Mr. Nero as to the procedural matters
5 relating to this matter.

6 In particular, when we learned, I believe, in
7 June that the matter was set down for hearing on July 10th, I
8 let Mr. Nero know that. We filed a motion, you may recall
9 asking that it be delayed to a later date in July or else later
10 in the summer, and I discussed with him at some length the fact
11 that that was the only week in July and August, that I was
12 going to be out of town at that time.

13 And Mr. Nero also had played a role, and I
14 discussed with my concerns when the ANC was finally alerted to
15 the fact that there was a motion to disqualify Ms. Renshaw.
16 Although the motion was filed in May, it did not make its way
17 to any ANC Commissioner until a few days before the hearing was
18 scheduled on July 10th, and Mr. Nero played some role in that.

19 It was scheduled for July 10th. Now, I'm not
20 saying Mr. Nero intentionally scheduled this hearing or had any
21 role to play in scheduling this procedural matter for the date
22 that I was out of town, but you can understand the appearance
23 concern that creates, that someone who was involved with a
24 party knew that I was not available on that date and,
25 therefore, had no opportunity to make the presentations I would

1 have made at the time about the lack of disqualification of Ms.
2 Renshaw.

3 CHAIRPERSON CROSS REID: Okay, okay.

4 MS. HOLMES: So it has created a particular
5 difficulty.

6 CHAIRPERSON CROSS REID: All right. So what do
7 you want us to do?

8 MS. HOLMES: As I said before, I think I should
9 be heard on the reinstatement of Board Member Renshaw, and in
10 addition, I would respectfully request that there is at least a
11 concern that every member of the Board is disqualified because
12 of this and a new Board needs to be constituted to hear this
13 matter.

14 CHAIRPERSON CROSS REID: Board members?

15 COMMISSIONER MITTEN: I guess I have two things
16 to say. One is that I think that given the situation that Ms.
17 Holmes has outlined, I think we could give her a few minutes to
18 make her case for I would call it a motion for reconsideration
19 on our part, and then we could see if there was any interest on
20 the part of the Board in doing that as it relates to the
21 recusal of Board Member Renshaw.

22 But on the issue of the disqualification of the
23 Board, I think that just in the same way that we do not de
24 facto recuse ourselves or Board members because someone asks us
25 to, they have to establish that they have, in fact, been

1 tainted in some way.

2 I think absent a showing on your part that we
3 have been tainted, I don't think it would be appropriate for
4 this Board to be disqualified.

5 So you yourself when you mentioned your contact
6 with Mr. Nero, you did say very specifically it was procedural
7 matters, and I think if there were substantive matters that you
8 felt that we had been -- had conversations or been influenced
9 by Mr. Nero in some way, that would rise to a different level.

10 Even though I'm unaware of it, I have not personally had a
11 conversation with Mr. Nero, and perhaps each of us could go on
12 the record and say whether we've had any conversations with Mr.
13 Nero on anything related to this case.

14 And so that concludes what I have to say about
15 the second point, but the first point, I think, in fairness,
16 since there was this inadvertent scheduling, and Ms. Holmes is
17 the representative from the ANC, I think in fairness we should
18 give her five minutes and hear her.

19 CHAIRPERSON CROSS REID: Comments, Mr. --

20 MEMBER GRIFFIS: That would be fine with me.
21 Just in terms of making comments regarding Mr. Nero, I can
22 unequivocally say I have not had a conversation with Mr. Nero
23 based on this case, and in fact, if he has sent information, I
24 was unaware that he was the sender. Outside of the case that I
25 got, I have no idea who sends it except from this office.

1 CHAIRPERSON CROSS REID: I certainly don't think
2 that I've been tainted, Ms. Holmes. If I understand you
3 correctly, you're saying that you want the Board to disqualify
4 themselves. You want us to disqualify ourselves based on your
5 assertion.

6 MS. HOLMES: If Mr. Nero has participated in this
7 matter, yes.

8 CHAIRPERSON CROSS REID: No.

9 MS. HOLMES: I think it does disqualify you.

10 CHAIRPERSON CROSS REID: Okay. Well, I don't
11 think so. I don't think we've been tainted. I know this Board
12 member has not been, and I don't think that -- I think that the
13 level of -- the fact that Mr. Nero happens to work for the BZA
14 now would, in effect, cause him not to be able to -- that his
15 working here would then give you cause for a basis for us
16 disqualifying ourselves. There is -- I see no reason for that.

17 I certainly don't think that we have been in any
18 way influenced or tainted by the fact that he previously worked
19 somewhere else, that we have had some type of involvement with
20 this particular Applicant.

21 MEMBER LEVY: For the record, I'd like to add
22 I've had no conversations either with Mr. Nero, and I echo Mr.
23 Griffis' remarks that if he provided the information in the
24 packets, I have no knowledge that it was him specifically
25 either.

1 COMMISSIONER MITTEN: And, Madame Chair, I might
2 also just add that perhaps Ms. Kress could make sure just so
3 that everyone's mind can be at peace that Mr. Nero won't have
4 any further participation in this matter, procedural or
5 otherwise, and then this issue won't linger.

6 MS. KRESS: I would just say, first of all, he
7 did not provide the information in the package. This is
8 information that comes into the record, is copied by someone
9 else. He doesn't even read or see it unless he has a need to
10 go in for some procedural to make sure something has been
11 scheduled.

12 He also does not do scheduling. I and I alone do
13 all scheduling here. He will gather information, but it comes
14 to me and all final decisions are made by me.

15 And I can speak a little about the hearing on
16 Anne Renshaw's recusal was scheduled earlier, and then
17 conditions beyond the Board's control, it was then pushed to a
18 later date, and it got pushed and pushed until the only date
19 left was the week right before this week, which was set to meet
20 your schedule.

21 But it got delayed and not on purpose, and if you
22 go back and read the various transcripts, you will see how that
23 happened and why.

24 And to my knowledge his only participation has
25 been procedural. In fact, that is his only participation role

1 on appeals, period, is procedural.

2 MS. HOLMES: And is it my understanding that you
3 intend to allow him to continue to participate in procedural
4 matters?

5 MS. KRESS: There -- it is -- he is complete and
6 finished now, and, no, he will not participate anymore. He
7 participates in the beginning stages. From here on it is
8 handled by the members and the staff that you see here today.

9 Once it gets into the hearing room, he has no
10 reason to interact anyway. So it wouldn't happen as normal
11 process, and I guarantee you it will not happen, period.

12 CHAIRPERSON CROSS REID: I don't think -- excuse
13 me. I don't think that "participate" is good word.

14 MS. KRESS: I'm sorry. Yes.

15 CHAIRPERSON CROSS REID: I think that in the
16 course of his duties that he performs here that there was --
17 there may have been some type of work or something that would
18 be germane to the intake that is done for all cases that come
19 into --

20 MS. KRESS: But appeals, no. That's a different
21 situation.

22 CHAIRPERSON CROSS REID: In this instance you're
23 saying that he was not even --

24 MS. KRESS: Involved in the intake, no.

25 CHAIRPERSON CROSS REID: At all.

1 MS. KRESS: No.

2 CHAIRPERSON CROSS REID: Okay.

3 MS. KRESS: Procedurally he did speak to what was
4 to happen when and what was supposed to be involved. I need to
5 clarify this because --

6 CHAIRPERSON CROSS REID: Okay.

7 MS. KRESS: -- his new role is to review and to
8 advise applicants on whether their application is complete or
9 not, but then to go further and to comment even personally on
10 whether he thinks the relief being requested is appropriate or
11 not.

12 He didn't do that. In fact, I will tell you I'm
13 the person who did that on this particular case. So I know who
14 did it, but he did not do that.

15 MS. HOLMES: Well, I know that I was referred to
16 him on several occasions when I called for information. So it
17 was clear to me for some period of time that he had
18 responsibility for the matters that I was addressing relating
19 to this matter when he should have been disqualified from that.

20 Can you tell me what date at which he has been
21 told not to handle matters relating to this case?

22 MS. KRESS: I mean, absolutely affirmatively as
23 of today, but he had stopped prior to that. I think the only
24 communications, unless you know something that I don't,
25 happened with you. So you are the person most knowledgeable

1 about what happened and what he could have tainted.

2 I believe I had all of the rest of the
3 conversations with the Applicant, the person bringing the and
4 persons bringing the appeal today.

5 DR. CHIAPELLA: The ESI did talk to him about
6 some procedural matters. I actually don't remember
7 specifically. I think I asked him some questions, and I did
8 send in a couple of E-mails. He responded in one case that the
9 attachment didn't come through, and in the other case that it
10 wasn't appropriate to send E-mails.

11 MS. KRESS: Yet.

12 DR. CHIAPELLA: That was it. That's what I
13 remember.

14 MEMBER GRIFFIS: Madame Chair, I think we've been
15 pretty clear on this. Maybe we want to move on unless you have
16 other things.

17 MS. SANSONE: Madame Chair, there's only one
18 other point, I guess. We've referred to the Board's packages,
19 and I just wanted to clarify for everyone those packages are
20 exact copies of the public file in this case. There would be
21 no other material in them other than what is in the public
22 record.

23 CHAIRPERSON CROSS REID: Okay. Well, I think
24 your bringing out these issues we appreciate, Ms. Holmes, and I
25 think that the Board feels very strongly that there is no basis

1 for us to feel that we've been influenced or, quote, unquote,
2 tainted by the fact that Mr. Nero happens to now be employed by
3 the Office of Zoning.

4 Now, the last issue in regard to the
5 reconsideration of the recusal of Ms. Renshaw, Ms. Mitten has
6 said that she recommended giving you five minutes to discuss
7 that further.

8 If other Board members are agreeable to that, we
9 can do that or we can decide that we've already taken care of
10 it.

11 MS. DWYER: Madame Chair, I would object to
12 reconsideration. I think that Ms. Holmes has had the
13 opportunity to file any written materials on that motion and
14 put it in the record, and I think that the Board -- I believe
15 that the Board should stand by its earlier decision and not
16 allow this additional time at this point to reconsider a
17 decision that was well -- in our opinion, well thought out and
18 well reasoned, and should not be revisited.

19 CHAIRPERSON CROSS REID: And another thing, too,
20 Ms. Mitten, is that if, in fact, we do allow Ms. Holmes the
21 opportunity to express her feelings about the recusal or ask
22 for reconsideration, we have to also give equal time to the
23 attorney for Sunrise, and so this can kind of get detracted.

24 COMMISSIONER MITTEN: That's fine. I mean, I'm
25 very confident in the decision that we made, but given that

1 there was some suggestion that the ANC was purposely excluded
2 from the hearing at which we had that, that was the only
3 reason I suggested it.

4 MEMBER GRIFFIS: Yeah, I didn't see a strong case
5 for why should entertain looking back and hearing other
6 discussions on the reinstatement. Hearing the issue about the
7 staff member, Nero, my understanding was there was some tie to
8 how the schedule was manipulated so that people couldn't be
9 there.

10 I don't think that's clear. I don't think that
11 makes a case for us hearing other comments about it, and
12 frankly, I'm not prepared to revisit that issue or take action
13 that would change that issue that's already been decided.

14 So I wonder what the purpose would actually be.

15 CHAIRPERSON CROSS REID: All right. Then I think
16 that -- Mr. Levy, did you have any comment on this particular
17 issue?

18 MEMBER LEVY: I don't. I, frankly, don't know
19 where I stand on that because I wasn't sitting on the Board
20 when that vote was taken.

21 CHAIRPERSON CROSS REID: Right. So I think that
22 it would probably be best if he were not to vote in this regard
23 because of two things. One, he wasn't here for the first vote.
24 That's one thing, but secondly, he has not had any information
25 or material submitted to him that would prepare him to be able

1 to vote.

2 So that being the case, I think that we should --
3 then we'll just take up the motion and vote on the motion, and
4 that is to reconsider the recusal of Anne Renshaw. Is there a
5 second?

6 COMMISSIONER MITTEN: Just to clarify before you
7 go --

8 CHAIRPERSON CROSS REID: Okay.

9 COMMISSIONER MITTEN: -- before you go there, if
10 you even let Ms. Holmes' issue rise to the level of a motion,
11 then you just entered into --

12 CHAIRPERSON CROSS REID: It's already a motion.

13 COMMISSIONER MITTEN: Well, if it's properly
14 before us.

15 CHAIRPERSON CROSS REID: Okay.

16 COMMISSIONER MITTEN: Which I don't know if it is
17 because there's opportunities for reconsideration that I
18 understand typically come at the end after everything is over
19 with, but somebody could -- I mean after the whole case is over
20 with.

21 CHAIRPERSON CROSS REID: I think that that's a
22 good point that you're making. I think that typically, Ms.
23 Sansone, do we not take up the issue of reconsideration after
24 the order has been issued, within a certain time period after
25 the order has been issued? Then we take up a motion for --

1 excuse me. Then we entertain a --

2 MS. KRESS: You can do it that way or you on your
3 own motion any time before the order is signed can reevaluate
4 what you've done. You can do it either way. Both are within
5 your procedures, but it has to be you on your own motion, not
6 responding to her motion.

7 Do you understand what I'm saying? On your own
8 motion you can reconsider, but you cannot entertain her motion
9 until the written order on your motion is out, and then once
10 that's out, then she can file for a reconsideration or a
11 rehearing.

12 CHAIRPERSON CROSS REID: Well, then that being
13 the case, I don't -- I don't a motion. We don't have a motion.

14 MS. KRESS: You don't have a valid motion in
15 front of you right now.

16 CHAIRPERSON CROSS REID: So it would not be --
17 excuse me -- it would not be proper for us to vote on Ms.
18 Holmes' motion until after the order has been issued, correct?

19 MS. KRESS: But may I volunteer something
20 procedurally? Basically I was just talking with Marie. We're
21 going to try and get this order out in the next couple of days.

22 Once that order is out, then you have ten days to file for
23 reconsideration or rehearing, and so there would be time prior
24 to the August 3rd, if you chose to pursue this; there would be
25 time for you to respond and list your reasons and make your

1 case why.

2 MS. HOLMES: So I take it the Board is, in
3 effect, denying -- my motion was actually to reinstate Ms.
4 Renshaw. You've construed it to be a motion for
5 reconsideration, which is untimely. I'll consider making that
6 later, and you're denying my motion to reinstate her.

7 CHAIRPERSON CROSS REID: I think that --

8 MS. KRESS: It's not properly here yet.

9 CHAIRPERSON CROSS REID: I think what you heard
10 was that if we wanted -- if the Board members wanted to
11 reconsider it, then one of us could put the motion on the
12 floor. However, for it to come from a party, it would have to
13 be ten days after the order is issued, and Ms. Kress has said
14 that you will have an opportunity to do that if you wish
15 properly because the order comes out in a couple of days, and
16 then there's certainly time between the time that the order
17 comes out and the time that we actually start the case, which
18 is on the 3rd of August for you to have the opportunity to put
19 a motion in for reconsideration.

20 I think that would probably be the best way to
21 proceed.

22 MS. HOLMES: Thank you. I appreciate your
23 consideration of these issues.

24 CHAIRPERSON CROSS REID: Thank you.

25 MS. DWYER: Madame Chair, I have one preliminary

1 matter. In reviewing the rules of the Board for appeals, the
2 Appellant, and in this case there are two Appellants, the
3 neighborhood association and the ANC-3G, which joined the
4 Appellant, are required to file 14 days before the hearing a
5 pre-hearing submission that includes copies of any exhibits
6 they intend to use at the hearing, any photographs, any charts,
7 the names of expert witnesses, and their qualifications.

8 None of this information has been filed in the
9 record, and we understand for the first time this evening that
10 they do have an expert witness, and there are obviously
11 exhibits that they brought this evening.

12 So I would request that the Board require the
13 Appellants to comply with the rules and to file 14 days before
14 the next hearing the information that Section 3112.10 requires
15 so that we all have notice and an opportunity to respond.

16 MS. HOLMES: If I can request clarification, it
17 was my understanding that the ANC's statement was filed 14 days
18 in advance.

19 CHAIRPERSON CROSS REID: Well, be it as it may,
20 look. Let's not split hairs. I think that we're all tired,
21 and we're all ready to go home.

22 MS. HOLMES: Well, I'm confused.

23 CHAIRPERSON CROSS REID: At this point in time
24 there's plenty of time. Whatever you didn't submit, there's
25 plenty of time to get it in within 14 days before the hearing

1 on August the 3rd. So that could be taken care of; is that not
2 correct?

3 MS. HOLMES: That is correct.

4 CHAIRPERSON CROSS REID: So I think everyone is
5 clear with that.

6 MS. HOLMES: It's my understanding we already did
7 it, and if you didn't get it for some reason, I need to know
8 that because we don't want to do it again.

9 CHAIRPERSON CROSS REID: Well, then staff --
10 excuse me. Talk to staff, and determine if there is something
11 that we didn't get and if so, just make sure that we do.

12 MS. KRESS: Yes. Let me just comment
13 procedurally. I think Maureen is speaking to some things that
14 are typically put in the records that have not been put in and
15 have not been served on parties, but I will personally assist
16 procedurally to review those things with you and make sure we
17 get all of the right things in as soon as possible.

18 CHAIRPERSON CROSS REID: Don't tell me you have a
19 preliminary matter, too.

20 DR. CHIAPELLA: I have a question because some of
21 what we might be addressing now would be in response to
22 Sunrise's responses. So what we have is kind of an iterative
23 process, and obviously if information is new to us, we're not
24 going to be able to comply with that 14-day advance rule.

25 As one point at issue was this perhaps

1 misinterpretation of the DCRA's sharing or not sharing this
2 Corporation Counsel opinion. When we just received this, at
3 that point we respond to something that's new to us. So there
4 will be, if something new comes up, there would need to be the
5 opportunity to address that.

6 MS. DWYER: Madame Chair, I have no objection to
7 that. That's the normal procedure. What we have learned this
8 evening is that there is an expert witness that we've learned
9 about for the first time, and it is the Appellant that has the
10 burden of proof, and under the Board's rules, any information,
11 materials not filed 14 days in advance cannot be used at the
12 hearing, and that would include the photograph, charts, and
13 other exhibits.

14 And so I would simply ask that staff work with
15 the Appellants to make certain that all of the materials that
16 are referenced are filed in the record so that everyone has all
17 of the information before the hearing.

18 CHAIRPERSON CROSS REID: Okay. That's been
19 established. She will.

20 Any other comments, questions?

21 (No response.)

22 CHAIRPERSON CROSS REID: All right. Then this
23 will then conclude the preliminary matters for the hearing that
24 will now be continued to August the 3rd, at 9:30 a.m., for the
25 appeal of Nebraska Avenue Neighborhood Association, Case No.

1 16716.

2 Okay. Thank you very much.

3 (Whereupon, at 7:06 p.m., the public hearing in
4 the above-entitled matter was adjourned.)
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